Supreme Court, U. S.
FILED
JAN 25 1979
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-488

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

564.54 ACRES OF LAND, MORE OR LESS, SITUATED IN MONROE AND PIKE COUNTIES, COMMONWEALTH OF PENNSYLVANIA, AND BENEDICT F. PASTORINI, ET AL., SOUTHEASTERN PENNSYLVANIA SYNOD OF THE LUTHERAN CHURCH IN AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 21, 1978
CERTIORARI GRANTED NOVEMBER 27, 1978

In the Supreme Court of the United States

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RELEVANT DOCKET ENTRIES

DATE

1970

June 15—COMPLAINT—in condemnation and demand for trial by jury.

June 15—DECLARATION OF TAKING—

June 15—NOTICE—of condemnation

June 15—PETITION—for order for delivery of possession.

June 15—ORDER—for delivery of possession. (N)

June 6—CERTIFICATE—of Clerk, acknowledging receipt of check #104,87 in the sum of $893,000.00 for deposit in the Registry of the Court, representing estimated compensation.

1972

Dec. 15—PLAINTIFF'S MEMORANDUM—in support of pre-trial rulings.

PLAINTIFF'S REQUEST—for pre-trial rulings

Dec. 15—PLAINTIFF'S MEMORANDUM—re substitute facilities as measure of damage Trs. 1500, 2122 & 2123

1973

Jan. 31—AFFIDAVITS—NO TRACT SPECIFIED WERE SEVERAL MENTIONED—of Rev. Dr. William A. Janson.

June 22—ORDER—Tr. 1500, 2122, 2132—Plaintiff having filed a request for pre-trial rulings, and the Court having heard oral argument and having considered the briefs of counsel,

It is ORDERED that Tuesday, August 14, 1973 at 2:00 P.M. at Harrisburg, Pa. is fixed as the time and place for oral argument and the submission of evidence on the following issues:

DATE

1973

1. The loss of protection of a grandfather's clause and the impact on substituted facilities of regulatory requirements of the Commonwealth of Pennsylvania and any agency of political subdivision thereof.

2. The public features of the defendants facilities as argued in defendant's memorandum. (S)

Copies to counsel of record.

Jan. 15—MEMO & ORDER—(Tr. 1500, 2122, 2132)—It is Ordered that;

1. The cost of substitute facilities is not a proper measure of compensation for the taking of defendant's property.

2. All other rulings relative to the valuation standard or standards to be applied are reserved. (S)

Copies to Atty Peter M. Mattoon, and U.S. Atty and Atts Charles MacMullan and Peter H. Ruvolo and Joseph C. Kreder, Esq.

1974

March 11—ORDER—(Tr. 1500, 2122, 2132)—Defendant, Southeastern Pennsylvania Synod, having submitted a letter dated January 22, 1974, requesting that the court's order of January 15, 1974, "be amended to include a Section 1292(b) certification. 28 U.S.C. 1292(b)," and it appearing that the propriety of the substitution standard of valuation involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

It is ORDERED that

1. The letter of January 22, 1974, from defendant, Southeastern Pennsylvania Synod, is considered as a motion to amend the court's order of January 15, 1974, to include a Section 1292(b) certification, 28 U.S.C. & 1292(b);

DATE

1974

2. The motion is granted.

It is FURTHER ORDERED that the court's order of January 15, 1974, in the above captioned matter is hereby amended by adding thereto the following paragraph:

"3. It is hereby CERTIFIED pursuant to 28 U.S.C. & 1292(b) that the propriety of the substitution standard of valuation involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination on the litigation." (S)

Copies to counsel of record.

Apr 24—AFFIDAVIT—of John J. Levkulic. (Originally filed with the Court on Aug. 14, 1973)

AFFIDAVIT—of Rev. Roy E. Gulliford. (Originally filed with the Court on Aug. 14, 1973)

APPELLANT'S—Trs. 1500, 2122, 2132—Southeastern Pennsylvania Synod of the Lutheran Church in America, designation of the Record for Appeal.

1975

Jan. 13—COURT OF APPEALS OPINION—(Filed 12-30-74) Reversing the judgment of the District Court entered on 1-15-73.

June 12—AMENDED JUDGMENT—(Certified Copy) (Trs. 1500, 2122 & 2132)—from U.S. Court of Appeals that the order of the District Court filed January 15, 1974, as amended by order dated March 11, 1974, be, and the same is hereby reversed. Each party shall bear his own costs, and

June 12—ORDER—(Certified copy)—from U.S. Court of Appeals. The appellee's Petition for Modification of December 30, 1974 Opinion or for Rehearing before the original panel is denied.

DATE

1975

The Judgment of the court is hereby modified to provide that each party will bear his own costs. (Gibbons)

Copy of Opinion attached thereto.

June 12—Copy of Amended Judgment and Order mailed to Judge Sheridan.

Documents Nos. 1, 2, 5, 17, 19, 21, 82, 85, 90, 92, 108, 120, 122, 125, 126 and 127 Pertaining to Tracts 1500, 2122 and 2132 mailed to W-B.

Sept. 30—SPECIAL INTERROGATORIES—(Tr. 1500, 2122, 2132)—Jury found that Doctrine of Substitute Facilities does not apply.

Sept. 30—MINUTE SHEET (9th day)—(Tr. 1500, 2122, 2132)—Synod moves for withdrawal of jury and/or mistrial. DENIED. Jury Verdict received (Special Interrog) and Jury polled. (S)

Oct. 3—VERDICT—Tr. 1500, 2122, 2132—We, the jury, find in favor of Southeastern Pa. Synod of Lutheran Camps of America and award the following:

Tr. 1500—Camp Miller—$250,000.00

Tr. 2122—Camp Ministerium—$300,000.00

Tr. 2132—Camp Hagan—$190,000.00

Nov. 5—JUDGMENT ON VERDICT—(Tract 1500)—Ordered that judgment be entered in favor of Southeastern Pa. Synod of Lutheran Camps of America and against U.S.A. in sum of $250,000.00. The sum of $186,000.00 having been deposited, there remains to be deposited the sum of $64,000.00 with int. thereon at rate of 6% per annum from 6/15/70 until date of deposit. (S)

Copies to counsel of record, from Hbg.

DATE

1975

Nov. 5—JUDGMENT ON VERDICT—(Tract 2122)—Ordered that judgment be entered in favor of Southeastern Pa. Synod of Lutheran Camps of America, and against the U.S.A. in sum of $300,000.00. The sum of $210,000.00 having been deposited into Registry of Court the sum of $90,000.00 together with int. thereon at rate of 6% per annum from 6/15/70 until date of deposit. (S)

Copies to counsel from Harris.

Nov. 5—JUDGMENT ON VERDICT—(Tract 2132)—Ordered that judgment be entered in favor of Southeastern Pa. Synod of Lutheran Camps of America and against the U.S.A. in sum of $190,000.00. The sum of $144,000.00 having been deposited into Registry of Court, the remains to be deposited into registry the sum of $46,000.00 together with int. thereon at rate of 6% per annum from 6/15/70 until date of deposit. (S)

Copies to counsel from Harris.

Nov. 14—MOTION—of Condemnee, Southeastern Penna. Synod of the Lutheran Church In America, for New Trial, and

Nov. 14—CERTIFICATE—of service thereof.

1976

Dec. 8—OPINION—of Judge Muir, and

Dec. 8—ORDER—(Tracts 1500, 2122 and 2132)—Church in America's motion for a new trial is denied. (M)

Copies to all counsel of record.

1977

Jan. 11—APPEAL—Tr. 1500, 2122, and 2132 (filing fee paid)—of Defendant Southeastern Pa. Synod of Lutheran Camp of America from Order of 8th day of Dec., 1976, denying deft's. motion for a new trial, and Bond for Costs in sum of $250.00.

DATE

1977

Jan. 19—RECORD ON APPEAL—mailed to the U.S. Court of Appeals.

1978

Apr. 25—OPINION—of U.S. Court of Appeals dated 3/27/78 .... "The order of the district court denying the Synod's motion for a new trial will be reversed and the case remanded for a new trial in accordance with this opinion. (Judge Van Dusen) ...." However, because I am bound by the holding in 564.54 acres I, and because under the holding of that case as elucidated by Judge Van Dusen, I do not believe the litigants got a fair trial, I join Judge Van Dusen in Parts I, II and III of his opinion and I vote to reverse." (Concurrence by Judge Stern)
and,

"I respectfully dissent to the remand of this case for another trial because I believe first that the jury charge given by the presiding judge, the late Chief Judge Sheridan, faithfully adhered to the principles of law enunciated by us in U.S. vs. 564.54 Acres of Land I, 506 F.2d 796 (3d Cir. 1974) concerning condemnation of public facilities owned by a nonprofit property owner, and that no party objected to the instructions; second, that the errors, if any, in the charge were minimal and nowhere near the magnitude of fundamental error; and third, that any possible misstatement of the law by the Government in its closing remarks was specifically cured by the trial judge", and I would therefore affirm the judgment of the district court denying the motion for a new trial. (Dissent by Judge Rosenn)

June 5—J.S. 5—case reopened

June 6—CASE FILE—returned from US Ct of Appeals. Judgment 4-25-78

DATE

1978

June 6—DOCKETING LETTER—and

CERT. COPY OF JUDGMENT—from Ct of Appeals (No. 77-1238 C.A.), Ordered and Adjudged that the Order of the Dist. Ct., dated 12/8/76, be and the same is hereby reversed, and the cause remanded for a new trial in accordance with the opinion of this Court. Costs taxed against appellee. (Rosenn and Van Dusen, and Stern) Certified as a true copy and issued in lieu of a formal mandate on June 1, 1978. (Total costs taxed $539.15) (Costs taxed in favor of appellant) Wm 6-5-78

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 70-240

Certified from the record

Date—6/16/70

T. H. CAMPION
Clerk

Per—/s/ [Illegible]
Deputy Clerk

UNITED STATES OF AMERICA, PLAINTIFF

vs.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, COMMONWEALTH OF PENNSYLVANIA, AND BENEDICT F. PASTORINI, ET AL., DEFENDANTS

DECLARATION OF TAKING

TO THE HONORABLE,
THE UNITED STATES DISTRICT COURT:

I, Stanley R. Resor, Secretary of the Army of the United States of America, do hereby declare that:

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Acts of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591), March 1, 1917 (39 Stat. 948, 33 U.S.C. 701), July 18, 1918 (40 Stat. 911, 33 U.S.C. 594), and August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2), which authorize the acquisition of land for flood control projects; the Act of Congress approved October 23, 1962 (Public Law 87-874), which act authorizes the development of the Delaware River Basin; the Act of Congress approved September 1, 1965 (Public Law 89-158), which act authorized the establishment of the Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey, as part of the Tocks Island Reservoir Project; and the Acts of Congress approved October 29, 1969 (Public Law 91-98) and December 11, 1969 (Public Law 91-144) which acts made funds available for such purposes.

(b) The public uses for which said land is taken are as follows: The said land is necessary adequately to provide for a national recreation area in the Delaware River Basin and for other uses incident thereto. The said land has been selected by me for acquisition by the United States for use in connection with the establishment and use of the Delaware Water Gap National Recreation Area, as part of the Tocks Island Reservoir Project, Pennsylvania and New Jersey, and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the land being taken is set forth in Schedule "A" attached hereto and made a part hereof, and is a description of the same land described in the complaint in the above entitled cause.

3. The estate taken for said public uses is the fee simple title to the land described in Schedule "A", subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

4. Plans showing the land taken are annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the registry of the said court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration to be signed in its name by said Stanley R. Resor, Secretary of the Army, this 21st day of May A.D. 1970, in the City of Washington, District of Columbia.

/s/ Stanley R. Resor
Secretary of the Army

SCHEDULE A

The land which is the subject matter of this declaration of taking aggregates 564.54 acres in Monroe and Pike Counties, Commonwealth of Pennsylvania. A description of the land taken, together with the names and addresses of the purported owners thereof and a statement of the sum estimated to be just compensation therefor, are as follows:

TRACT NO. 904

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Smithfield, and more particularly bounded and described as follows:

Beginning at a corner common to the lands of the subject owner and the lands now or formerly of Frank LeBar, et al, being a point in the southerly right of way line of Mohawk Street, as shown on Map of Hi-a-le-ah Park, Smithfield Township, Monroe County, Pennsylvania, dated 1944, and filed for record in Plat book 8, Page 160 in the records of Monroe County, Pennsylvania, the said point being further located South 85° 55′ East 1378 feet, more or less, from the intersection of the centerline of Pennsylvania Legislative Route Number 45012 with the centerline of Cedar Street; thence, from the said point of beginning, and with the lands of the said LeBar, et al, and with the said southerly right of way line of Mohawk Street,

(1) North 85° 23′ East 102 feet to a corner common to the lands of the said subject owner and the lands now or formerly of American Land, Inc.; thence, leaving the lands of the said LeBar, et al, and leaving the southerly right of way line of the said Street, and with the lands of the said American Land, Inc.,

(2) South 23° 34′ East 241 feet, more or less, to a point at the mean low water mark of the Delaware River; thence, leaving the lands of the said American Land, Inc., and with the mean low water mark of the said River, downstream,

(3) In a generally southwesterly direction, approximately 97 feet to a corner common to the lands of the said subject owner and the lands of the said LeBar, et al; thence, leaving the mean low water mark of the said River, and with the lands of the said LeBar, et al,

(4) North 23° 34′ West 261 feet, more or less, to the place of beginning, containing 0.56 acre, more or less.

The bearings used herein are referenced to the Pennsylvania State Rectangular Grid System (North Zone), 1927 N.A. Datum.

It is the intent of the foregoing description to include the same land as that described in a deed from Detleff A. Hansen and Lorene A. Hansen, his wife, to Benedict F. Pastorini and Viola E. Pastorini, his wife, dated May 29, 1958 and filed for record June 2, 1958 in Deed Book 243, Page 111 in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF PURPORTED OWNERS

Benedict F. Pastorini and
Viola E. Pastorini, his wife
210 Sixth Avenue
New York, New York

ESTIMATED JUST COMPENSATION $28,000.00

TRACT NO. 908

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Smithfield, and more particularly bounded and described as follows:

Beginning at a corner common to the lands of the subject owner and the lands now or formerly of Walter S. Wyckoff, et ux, and at a point in the line of the lands now or formerly of Frank LeBar, et al, being a point in the southerly right of way line of Mohawk Street, as shown on Map of Hi-a-le-ah Park, Smithfield Township, Monroe County, Pennsylvania, dated 1944, and filed for record in Plat Book 8 Page 160 in the records of Monroe County, Pennsylvania, the said point being

further located South 83° 40′ East 882 feet, more or less, from the intersection of the centerline of Pennsylvania Legislative Route Number 45012 with the centerline of Cedar Street; thence, from the said point of beginning, and with the lands of the said LeBar, et al, and with the southerly right of way line of the said Mohawk Street,

(1) North 76° 36′ East 108 feet to a corner common to the lands of the said subject owner and the lands now or formerly of Warren M. Wenner, et ux; thence, leaving the lands of the said LeBar, et al, and leaving the southerly right of way line of the said Street, and with the lands of the said Wenner, et ux, the following courses and distances:

(2) South 19° 39′ East 119 feet,

(3) South 23° 34′ East 204 feet, more or less, to a point at the mean low water mark of the Delaware River; thence, leaving the lands of the said Wenner, et ux, and with the mean low water mark of the said River, downstream,

(4) In a generally southwesterly direction, approximately 103 feet to a corner common to the lands of the said subject owner and the lands of the said Wyckoff, et ux; thence, leaving the mean low water mark of the said River, and with the lands of the said Wyckoff, et ux,

(5) North 23° 34′ West 310 feet, more or less, to the place of beginning, containing 0.73 acre, more or less.

The bearings used herein are referenced to the Pennsylvania State Rectangular Grid System (North Zone), 1927 N.A. Datum.

It is the intent of the foregoing description to include the same land as that described in:

(1) A deed from Warren M. Wenner and Dorothea M. Wenner, his wife, to Bonnie M. Bourne, dated April 3, 1952, and filed for record April 8, 1952, in Deed Book 184 Page 262.

(2) A deed from George Rowland Collins and Gladys Collins, his wife, to Bonnie M. Bourne, dated August 30, 1963, and filed for record September 24, 1963, in Deed Book 312 Page 519.

Both the above deeds are found in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESS OF
PURPORTED OWNER

Bonnie M. Bourne
136 West 52nd Street
New York, New York

ESTIMATED JUST COMPENSATION $42,000.00

TRACT NO. 1120

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Smithfield and more particularly bounded and described as follows:

Beginning at a corner common to the lands of Salvatore Frank Pappalardo, et ux, the lands of Alfred Pappalardo Sr., et ux, and the lands of John S. Michael, said point being the beginning of the eleventh or South 16° 59′ East 578 feet, line of lands described in a deed from Alfred Pappalardo, Sr. and Mary Pappalardo, his wife to Salvatore Frank Pappalardo and Mary Edna Papparaldo, his wife, dated June 11, 1951 and filed for record in Deed Book 180, Page 165 in the records of Monroe County, Pennsylvania, said point being further located South 22° 20′ East 1630 feet, more or less, from the intersection of the centerline of Township Route Number 515 with the centerline of Township Route Number 538; thence, from said point of beginning and with the lands of the said Alfred Pappalardo, Sr.

(1) South 28° 08′ East, passing a corner common to the lands of said Pappalardo, Sr., and the lands of Frank B. Kober, et ux, at approximately 483 feet, in all 574 feet to a corner common to the lands of the said Salvatore Frank Pappalardo and the lands of Ludwig Hofstetter, et al; thence, leaving the lands of the said Kober, and with the lands of the said Ludwig Hofstetter

(2) South 62° 43′ West 230 feet to a corner common to the lands of the said Salvatore Frank Pappalardo, the

lands of the said Ludwig Hofstetter and the lands of Anton Hofstetter; thence, leaving the lands of the said Ludwig Hofstetter and with the lands of the said Anton Hofstetter

(3) South 65° 43′ West, passing a corner common to the lands of the said Anton Hofstetter and the lands of Josie Pappalardo at approximately (illegible) 56 feet in all 236 feet to a corner common to the lands of the said Salvatore Frank Pappalardo and the lands of the said Jossie Pappalardo; thence, with the lands of the said Josie Pappalardo

(4) South 26° 45′ East, passing the Northerly right of way line of Pennsylvania Legislative Route Number 45012 at approximately 263.50 feet in all 279 feet to the center of the said Legislative Route Number 45012 and to a corner common to the lands of the said Salvatore Frank Pappalardo, the lands of the said Josie Pappalardo, and the lands of Albert E. Jochen; thence, leaving the lands of the said Josie Pappalardo and with the lands of the said Jochen and with the center of the said Legislative Route Number 45012

(5) South 76° 18′ West 46 feet to a corner common to the lands of the said Salvatore Frank Pappalardo, the lands of the said Jochen, and other lands of Alfred Pappalardo Sr.; thence, leaving the lands of the said Jochen and with the lands of the said Alfred Pappalardo, Sr. and continuing with the center of the said Legislative Route Number 45012

(6) South 70° 14′ West 219 feet to a corner common to the lands of the said Salvatore Frank Pappalardo, the lands of the said Alfred Pappalardo and the lands of Frank Pappalardo; thence, leaving the lands of the said Alfred Pappalardo and with the lands of the said Frank Pappalardo and continuing with the center of the said Legislative Route Number 45012

(7) South 73° 48′ West 244 feet to a corner common to the lands of the said Salvatore Frank Pappalardo, the lands of the said Frank Pappalardo and still other lands of the said Alfred Pappalardo Sr.; thence, leaving the lands of the said Frank Pappalardo and continuing with the center of the said Legislative Route Number

45012 and with the lands of the said Alfred Pappalardo Sr.

(8) South 81° 02′ West 173 feet to a corner common to the lands of the said Salvatore Frank Pappalardo and the lands of the said Alfred Pappalardo Sr.,; thence, leaving the center of the said Legislative Route Number 45012 and with the lands of the said Alfred Pappalardo Sr., the following courses and distances:

(9) North 27° 20′ West, passing the Northerly right of way line of the said Legislative Route Number 45012 at approximately 19 feet, in all 601 feet

(10) North 61° 37′ East, passing a corner common to the lands of the said Alfred Pappalardo Sr. and the lands of the Scranton Pocono Girl Scout Council at approximately 395 feet in all 814 feet, to a corner common to the lands of the said Salvatore Frank Pappalardo, the lands of the said Girl Scout Council and the lands of the said Michael; thence, leaving the lands of the said Girl Scout Council and with the lands of the said Michael

(11) North 47° 46′ East 322 feet to the place of beginning, containing 16.02 acres, more or less.

The bearings used herein are referenced to the Pennsylvania State Rectangular Grid System (North Zone) 1927 N A Datum.

The above described land is substantially the same land as that described in a deed from Alfred Pappalardo Sr. and Mary Pappalardo, his wife, to Salvatore Frank Pappalardo and Mary Edna Pappalardo, his wife, dated June 11, 1951 and filed for record June 11, 1951 in Deed Book 180, Page 165 in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF PURPORTED OWNERS:

Salvatore Frank Pappalardo and Mary Edna Pappalardo, his wife
R.D. #1
East Stroudsburg, Pennsylvania

Equitable Life Assurance Society of the United States
New York, New York
Mortgagee

George A. Michael
Address unknown
Water Rights

Earl F. Robacher and Mrs. Earl F. Robacher, his wife
(first name unknown)
Address unknown
Private right of way

Unknown heirs and assigns of Earl F. Robacher and Mrs. Earl F. Robacher, his wife
(first name unknown)
Private right of way

ESTIMATED JUST COMPENSATION $23,500.00

TRACT NO. 1330

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Smithfield and more particularly bounded and described as follows:

Beginning at a corner common to the lands of Herbert Erickson, et ux, and the lands of John C. Kinsella, et al, and at a point on the easterly side of an unnamed street, said point being the beginning of the fourth or North 70° 08′ East 174.31 feet, line of lands described in a deed from Frank J. Young and Norma E. Young, his wife, to Herbert Erickson and Helen Mary Erickson, his wife, dated August 10, 1957 and filed for record in Deed Book 235, Page 686, in the records of Monroe County, Pennsylvania; thence, from said point of beginning, and with the lands of the said Kinsella

(1) North 58° 36′ East 175.5 feet to a point in the line of lands of Pardee's Beach Development Corporation; thence, leaving the lands of the said Kinsella, and with the lands of the said Corporation

(2) South 27° 45′ East 99 feet to a corner common to the lands of the said Erickson, and the lands of New-

ton R. Brown, Jr., et ux; thence, leaving the lands of the said Corporation and with the lands of the said Brown

(3) South 58° 36′ West 186 feet to a corner common to the lands of the said Erickson, lands of the said Brown, and to a point on the easterly side of the said unnamed street; thence, leaving the lands of the said Brown and the easterly side of the said unnamed street

(4) North 31° 15′ West 99 feet to the place of beginning, containing 0.39 acre, more or less.

The bearings used herein are referenced to the Pennsylvania State Rectangular Grid System (North Zone) 1927 N A Datum.

The above described land is substantially the same land as that described in a deed from Frank J. Young and Norma E. Young, his wife, to Herbert Erickson and Helen Mary Erickson, his wife, dated August 10, 1957 and filed for record August 12, 1957 in Deed Book 235, Page 686 in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF PURPORTED OWNERS

Herbert Erickson and
Helen Mary Erickson, his wife
571 46th Street
Brooklyn, New York

Mary A. Treible, her heirs, devisees and assigns
Address unknown
Right of Way

East Stroudsburg Savings,
Building and Loan Association
East Stroudsburg, Pennsylvania
Mortgagee

ESTIMATED JUST COMPENSATION $12,000.00

TRACT 1500

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Smithfield and Township of Middle Smithfield and more particularly bounded and described as follows:

Beginning at a corner common to the lands of the Evangelical Lutheran Ministerium, and the lands of John S. Michael, and at a point in the line of lands of Pardee's Beach Development Corporation, said point being the beginning of the third, or South 24½° East 59 perches, line of lands described in a deed from E. Clarence Miller and Cornelia E. Miller, his wife, to the Evangelical Lutheran Ministerium, dated July 17, 1928 and filed for record in Deed Book 111, Page 507 in the records of Monroe County, Pennsylvania, said point being further located South 42° 30′ West 4420 feet, more or less, from the intersection of the centerline of Township Route Number 546 with the centerline of Township Route Number 515; thence, from said point of beginning and with the lands of the said Michael, the following courses and distances:

(1) North 59° 37′ East 141 feet

(2) North 37° 00′ East 1370 feet to a point in the line of lands of Herbert H. Theune; thence, leaving the lands of the said Michael, and with the lands of the said Theune

(3) South 28° 40′ East, passing the center of Pennsylvania Legislative Route Number 45012 at approximately 1390 feet, in all 2829 feet to a point on the right bank of the Delaware River; thence, leaving the lands of the said Theune, and with the right bank of the said river, downstream, the following courses and distances:

(4) South 66° 59′ West, passing the line between the Township of Smithfield and the Township of Middle Smithfield at approximately 350 feet, in all 1054 feet

(5) South 56° 48′ West 484 feet to a corner common to the lands of the said Ministerium and the lands of Patrick F. Rooney, et al; thence, leaving the right bank of the said river and with the lands of the said Rooney

(6) North 28° 33′ West, passing a corner common to the lands of the said Rooney and the lands of Ervin E. Rouch, et ux, and repassing the center of the said Legislative Route at approximately 997 feet, in all 1237 feet, to a corner common to the lands of the said Ministerium and the lands of the said Corporation; thence,

leaving the lands of the said Rouch, and with the lands of the said Corporation, the following courses and distances:

(7) North 52° 41′ East, repassing the line between the Township of Smithfield and the Township of Middle Smithfield at approximately 46 feet, in all 138 feet

(8) North 28° 30′ West 937 feet, to the place of beginning, containing 82.39 acres, more or less.

The bearings used herein are referenced to the Pennsylvania State Rectangular Grid System (North Zone) 1927 N A Datum.

The above described land is substantially the same land as that described in a deed from E. Clarence Miller and Cornelia E. Miller, his wife, to the Evangelical Lutheran Ministerium dated July 17, 1928 and filed for record August 7, 1930 in Deed Book 111, Page 507 in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF PURPORTED OWNERS

Evangelical Luthern Ministerium
Also known as Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States
A Pennsylvania Corporation
c/o Peter M. Mattoon, Esq.,
1035 Land Title Building
Broad and Chestnut Streets
Philadelphia, Pennsylvania

Estimated Just Compensation $186,000.00

TRACT 1501

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Middle Smithfield and more particularly bounded and described as follows:

Beginning at a corner common to the lands of Herbert H. Theune, and the lands of Lee B. Koehler, et ux, and

at a point in the line of lands of Deer Haven Corporation, said point being the beginning of the fifth or South 33° 25′ East 1505 feet, line of lands described on page 20 in a survey dated January 9, 1942 in a deed from Karl Theune and Elizabeth Theune, his wife, to Herbert H. Theune, dated July 29, 1953 and filed for record in Deed Book 195, Page 19, in the records of Monroe County, Pennsylvania, said point being further located North 69° 00′ West 2890 feet, more or less, from the intersection of the centerline of Township Route Number 546, with the centerline of Pennsylvania Legislative Route Number 45012; thence, from said point of beginning, and with the lands of the said Koehler

(1) South 45° 09′ East, passing a corner common to the lands of the said Koehler and the lands of Louis Warncke, et ux, and passing the center of Township Route Number 515 at approximately 718 feet, in all 1503 feet, to a corner common to the lands of the said Theune and the lands of the said Warncke; thence, continuing with the lands of the said Warncke

(2) North 50° 28′ East 891 feet to a corner common to the lands of the said Theune, lands of the said Warncke, and the lands of Edith M. Michael; thence, leaving the lands of the said Warncke, and with the lands of the said Edith M. Michael, as follows:

(3) North 40° 49′ East 29 feet

(4) South 45° 34′ East, passing the Northerly right of way line of the said Legislative Route at approximately 994.50 feet, in all 1011 feet to the center of the said Legislative Route and leaving the center of the said Legislative Route

(5) South 38° 03′ East, passing the Southerly right of way line of the said Legislative Route at approximately 16.50 feet, in all 117 feet

(6) South 53° 08′ West 35 feet

(7) South 34° 12′ East 913 feet to a point on the right bank of the Delaware River; thence, leaving the lands of the said Edith M. Michael, and with the right bank of the said river, downstream, the following courses and distances:

(8) South 48° 36′ West 327 feet
(9) South 39° 10′ West 404 feet
(10) South 37° 54′ West 583 feet
(11) South 45° 14′ West 538 feet
(12) South 51° 34′ West 532 feet
(13) South 59° 29′ West 311 feet to a corner common to to the lands of the said Thenue and the lands of the Evangelical Lutheran Ministerium; thence, leaving the right bank of the said river, and with the lands of the said Ministerium

(14) North 28° 40′ West, passing the center of the said Legislative Route at approximately 1,439 feet, passing a corner common to the lands of the said Ministerium, and the lands of John S. Michael, at approximately 2,829 feet, and passing the Southerly right of way line of the said Township Route Number 515 at approximately 3,132.50 feet, in all 3,149 feet, to a corner common to the lands of the said Thenue and the lands of the said John S. Michael, and to a point in the center of the said Township Route Number 515; thence, with the center of the said Township Route Number 515, and continuing with the lands of the said John S. Michael

(15) South 76° 53′ West 661 feet to a corner common to the lands of the said Theune, lands of the said John S. Michael, and the lands of the said Corporation; thence, leaving the center of the said Township Route Number 515, and leaving the lands of the said John S. Michael, and with the lands of the said Corporation, the following courses and distances:

(16) North 44° 44′ West, passing the Northerly right of way line of the said Township Route Number 515 at approximately 16.50 feet, in all 760 feet
(17) North 43° 26′ East 647 feet
(18) South 43° 34′ East 540 feet
(19) North 48° 03′ East 1005 feet to the place of beginning, containing 178.39 acres, more or less.

There is excepted from the above described land, the following tract:

Tract: 1515
Owner: Nicholas J. Behr, et ux
Acres: 1.02

The above described land after the aforesaid exception contains 177.37 acres, more or less.

The bearings used herein are referenced to the Pennsylvania State Rectangular Grid System (North Zone) 1927 N A Datum.

The above described land is substantially the same land as that described in a deed from Karl Theune and Elizabeth Theune, his wife, to Herbert H. Theune, dated July 29, 1953 and filed for record August 7, 1953, in Deed Book 195, Page 19, in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF PURPORTED OWNERS

Herbert H. Theune and
Maria Theune, his wife
R.D. #1
East Stroudsburg, Pennsylvania

Karl Theune and
Elizabeth Theune, his wife
Address unknown
Life Estate

Equitable Life Assurance Society
of the United States
New York, New York
Mortgagee

Mrs. Samuel Strunk
Address unknown
Right of Way

Wilson Stettler
R.D. #2
Northampton,
Pennsylvania
Tenant

ESTIMATED JUST COMPENSATION $175,000.00

TRACT 2122

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Middle Smithfield and more particularly bounded and described as follows:

Beginning at a corner common to the lands of the Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States and the lands of the Monroe Security

Bank and Trust Company, Trustee, and in the line of the lands of Karl Hope, et ux, said point being located South 24° 50′ West 3635 feet, more or less, from the intersection of the center of Legislative Route Number 45012 with the center of Township Route Number 633; thence, from the said point of beginning and with the lands of the said Bank and Trust Company, the following courses and distances:

(1) South 46° 46′ East 1664 feet (3rd Course, Deed Book 151, Page 133, North 43° West, 100 perches) to a point in the center of the said Legislative Route; thence, continuing with the lands of the said Bank and Trust Company and with the center of the said Legislative Route,

(2) South 33° 01′ West 376 feet to a point in the center of the said Legislative Route; thence, leaving the center of the said Legislative Route and continuing with the lands of the said Bank and Trust Company,

(3) South 57° 36′ East 1079 feet to a point in the right descending bank of the Delaware River; thence, leaving the lands of the said Bank and Trust Company, and with the said right descending bank of the Delaware River, the following courses and distances:

(4) South 02° 58′ East 394 feet,
(5) South 19° 34′ West 418 feet,
(6) South 31° 21′ West 556 feet,
(7) South 40° 05′ West 386 feet,

(8) South 26° 32′ West 358 feet to a corner common to the lands of Edward J. McFeely, et ux, and the lands of the said Ministerium; thence, leaving the right descending bank of the said river, and with the lands of the said McFeely, et ux,

(9) North 54° 20′ West 394 feet to a point in the center of the said legislative route; thence, continuing with the lands of the said McFeely, et ux, and with the center of the said legislative route,

(10) South 13° 25′ West 250 feet to a corner common to the lands of the said Ministerium and the lands of Mary Kessler Barr; thence, leaving, the lands of the said McFeely, et ux, and leaving the center of the said Legislative Route, and with the lands of the said Barr,

(11) North 53° 57′ East 530 feet; thence, continuing with the lands of the said Barr, the following courses and distances:

(12) South 41° 32′ West 258 feet,

(13) North 52° 05′ West 1055 feet to a point in the line of the lands of John A. Farrington; thence, leaving the lands of the said Barr and with the lands of the said Farrington, the following courses and distances:

(14) North 49° 46′ East 455 feet,

(15) North 47° 13′ West, crossing the center of Township Route Number 515 at approximately 21 feet, passing a corner common to the lands of the said Farrington and lands of Western Heritage Properties Limited (Inc.) at 105 feet, in all 854 feet,

(16) South 74° 45′ West 262 feet to a corner common to the lands of Francis Hickok Erdman, et al, and the lands of the said Western Heritage; thence, leaving the lands of the said Western Heritage and with the lands of the said Erdman, et al, the following courses and distances:

(17) North 46° 31′ West 845 feet,

(18) North 46° 25′ East, passing a corner common to the lands of the said Erdman, et al, and the lands of George K. Brands, Sr., et ux, at 498 feet, passing a corner common to the lands of said Brands, Sr., et ux, and lands of Karl Hope, et ux, at 1592 feet, in all 2563 feet, to the place of beginning, containing 183.79 acres, more or less.

The bearings used herein are referenced to the Pennsylvania State Rectangular Grid System (North Zone), 1927 N. A. Datum.

It being the intent of the foregoing description to include a part of the same land as that described in a deed from Mary Turn Balir, et al, to Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States, dated September 12, 1945 and filed for record September 26, 1945 in Deed Book 151, Page 133, in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF
PURPORTED OWNERS

Evangelical Lutheran Ministerium
Also known as Evangelical Lutheran Ministerium
of Pennsylvania and Adjacent States
c/o Peter M. Mattoon, Esq.,
1035 Land Title Building
Broad and Chestnut Streets
Philadelphia, Pennsylvania

Estimated Just Compensation $210,000.00

TRACT 2132

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Middle Smithfield, and more particularly bounded and described as follows:

Beginning at a corner common to the lands of the Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States and the lands of John Stettler, et ux, and at a point in the line of the lands of Sterling R. Schoonover, said point being further located North 80° 26′ East 3410 feet, more or less, from the intersection of the center of Legislative Route Number 45012 with the center of Township Route Number 633; thence, from the said point of beginning and with the lands of the said Stettler, et ux,

(1) South 51° 42′ East, passing a corner common to the lands of the said Stettler, et ux, and the lands of Harold Jensen, et ux, at 420 feet, the said point being in the center of Township Route Number 515, in all 965 feet, to a point on the right descending bank of the Delaware River; thence, leaving the lands of the said Jensen, et ux, and with the said right descending bank, the following courses and distances:

(2) South 61° 46′ West 69 feet,

(3) South 35° 02′ West 1396 feet to a corner common to the lands of the said Ministerium and the lands of

Albert A. Owens, et ux; thence, leaving the right descending bank and with the lands of the said Owens, et ux,

(4) North 49° 50′ West 892 feet to a point in the center of the said Township Route Number 515; thence, continuing with the lands of the said Owens, et ux, and with the center of the said Township Route Number 515,

(5) South 62° 13′ West 140 feet to a point in the center of the said Township Route Number 515; thence, leaving the center of the said Township Route Number 515, and continuing with the lands of the said Owens, et ux, the following courses and distances:

(6) North 61° 01′ West 478 feet,
(7) North 48° 42′ East 141 feet,
(8) North 56° 54′ East 198 feet,
(9) South 60° 37′ East 247 feet,

(10) North 40° 20′ East 895 feet to a corner common to the lands of the said Owens, et ux, and the lands of the said Schoonover; thence, leaving the lands of the said Owens, et ux, and with the lands of the said Schoonover,

(11) North 44° 15′ East 377 feet (6th Course, Deed Book 125, Page 475, North 57° 49′ East 364.5 feet) to the place of beginning, containing 37.72 acres, more or less.

It being the intent of the foregoing description to include the same land as that described in:

(1) A deed from J. W. R. Hilliard and Anne H. Hilliard, his wife, to Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States, dated November 18, 1936 and filed for record November 30, 1936, in Deed Book 125, Page 475.

(2) A deed from J. W. R. Hilliard and Anne H. Hilliard to Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States, dated January 18, 1937 and filed for record February 20, 1937, in Deed Book 126, Page 184.

(3) A deed from J. W. R. Hilliard and Anne H. Hilliard to Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States, dated November 10, 1944

and filed for record February 14, 1945 in Deed Book 148, Page 414.

All of the above deeds are found in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF PURPORTED OWNERS

Evangelical Lutheran Ministerium
Also known as Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States
A Pennsylvania Corporation
c/o Peter M. Mattoon, Esq.,
1035 Land Title Building
Broad and Chestnut Streets
Philadelphia, Pennsylvania

J. W. R. Hilliard and Ann H. Hilliard, his wife
Address unknown
Option Rights

Estimated Just Compensation $144,000.00

TRACT NOS. 2940 AND 2941

TRACT NO. 2940

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Middle Smithfield, and more particularly bounded and described as follows:

Being all of lots numbers two (2), three (3), four (4), five (5), six (6), seven (7), eight (8) and nine (9), in Section Number Two (2), Map of Proposed Sub-division, Winona Lakes, Middle Smithfield Township, Monroe County, Pennsylvania, dated December, 1964, and filed for record March 15, 1965 in Plot Book 9, Page 121, in the records of Monroe County, Pennsylvania.

The above described tract contains 5.63 acres, more or less.

It is the intent of the foregoing description to include the same land as that described in a deed from Karl Hope and Hilda Hope, his wife, to Florence McMenamin,

dated December 5, 1968 and filed for record December 5, 1968, in Deed Book 368, Page 596, in the record of Monroe County, Pennsylvania.

TRACT NO. 2941

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Middle Smithfield, and more particularly bounded and described as follows:

Being all of lots numbers eighty-five (85), eighty-six (86), eighty-seven (87), eighty-eight (88), eighty-nine (89) and ninety (90) in Section Number Two (2), Map of Proposed Sub-division, Winona Lakes, Middle Smithfield Township, Monroe County, Pennsylvania, dated December, 1964, and filed for record March 15, 1965 in Plot Book 9, Page 121, in the records of Monroe County, Pennsylvania.

The above described tract contains 2.40 acres, more or less.

It is the intent of the foregoing description to include the same land as that described in a deed from Karl Hope and Hilda Hope, his wife, to Florence McMenamin, dated December 5, 1968 and filed for record December 5, 1968, in Deed Book 368, Page 601, in the records of Monroe County, Pennsylvania.

NAME AND ADDRESS OF PURPORTED OWNER OF TRACT NOS. 2940 AND 2941

Florence McMenamin
c/o Harold E. Kohn
2600 The Fidelity Building
Philadelphia, Pennsylvania

ESTIMATED JUST COMPENSATION FOR TRACT NO. 2940 $5,000.00

ESTIMATED JUST COMPENSATION FOR TRACT NO. 2941 $2,000.00

TRACT NO. 2942

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Middle Smithfield, and more particularly bounded and described as follows:

Being all of lot number ninety-four (94) in Section Number Two (2), Map of Proposed Sub-division, Winona Lakes, Middle Smithfield Township, Monroe County, Pennsylvania, dated December, 1964, and filed for record March 15, 1965 in Plot Book 9, Page 121, in the records of Monroe County, Pennsylvania.

The above described tract contains 0.36 acre, more or less.

It is the intent of the foregoing description to include the same land as that described in a deed from Karl Hope and Hilda Hope, his wife, to Norman Lohman dated February 14, 1969, and filed for record February 17, 1969, in Deed Book 370, Page 660, in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF PURPORTED OWNERS:

Norman Lohman and
Agnes L. Lohman, his wife
85 North First Street
Stroudsburg, Pennsylvania

ESTIMATED JUST COMPENSATION $1,750.00

TRACT NO. 2943

A certain tract of land situated in the State of Pennsylvania, County of Monroe, Township of Middle Smithfield, and more particularly bounded and described as follows:

Being all of lot number ninety-five (95) in Section Number Two (2), Map of Proposed Sub-division, Winona Lakes, Middle Smithfield Township, Monroe County, Pennsylvania, dated December, 1964, and filed

for record March 15, 1965 in Plot Book 9, Page 121, in the records of Monroe County, Pennsylvania.

The above described tract contains 0.38 acre, more or less.

It is the intent of the foregoing description to include the same land as that described in a deed from Karl Hope and Hilda Hope, his wife, to Robert J. Berish dated February 14, 1969, and filed for record February 17, 1969, in Deed Book 370, Page 656, in the records of Monroe County, Pennsylvania.

NAMES AND ADDRESSES OF PURPORTED OWNERS:

Robert J. Berish and
Carolyn H. Berish, his wife
2 North Seventh Street
Stroudsburg, Pennsylvania

ESTIMATED JUST COMPENSATION $1,750.00

TRACT NO. 8547

A certain tract of land situated in the State of Pennsylvania, County of Pike, Township of Lehman, and more particularly bounded and described as follows:

Beginning at a corner common to the lands of the subject owner, the lands now or formerly of Louise P. Browning, et al, and at a point in the lands now or formerly of Irving S. Courtright, et ux, the said point being located in the center of Township Route Number 318, the said point being further located South 30° 58′ East 660 feet, more or less, from the intersection of the center of the said Township Route Number 318 with the center of Township Route Number 314; thence, from the said point of beginning and with the lands of the said Browning, et al, the following courses and distances:

(1) South 27° 46′ West 153 feet

(2) North 58° 20′ West, passing a corner common to the lands of the said Browning, et al, and the lands now or formerly of Frederick Alfred Kellermann, et ux, and continuing with the center of the said Township Route Number 314, at 1022 feet, in all 1302 feet, to a corner common to the lands of the said subject owner and the lands of the said Browning, et al, and at a point in the center of the said Township Route Number 314; thence, leaving the lands of the said Kellermann, et ux, and leaving the center of the said Township Route Number 314 and with the lands of the said Browning, et al, the following courses and distances:

(3) North 56° 16′ East 583 feet

(4) North 40° 29′ East 346 feet to a corner common to the lands of the said subject owner and the lands now or formerly of the Honeymoon Resorts, Inc., and at a point in the center of the said Township Route Number 318; thence, leaving the lands of the said Browning, et al, and with the lands of the said Resorts, Inc., and with the center of the said Township Route Number 318, the following courses and distances:

(5) South 38° 03′ East 260 feet

(6) South 04° 14′ East 32 feet to a point in the center of the said Township Route Number 318; thence, leaving the center of the said Township Route Number 318 and continuing with the lands of the said Resorts, Inc.,

(7) North 74° 10′ East 807 feet, (1st Course, Deed Book 84 Page 553, North 86° 00′ East 50 rods),

(8) South 61° 34′ East 535 feet

(9) North 55° 20′ East 127 feet

(10) North 19° 46′ East 88 feet

(11) South 60° 29′ East 193 feet

(12) North 21° 51′ East 591 feet to a point in the line of the lands of the said Browning, et al; thence, leaving the lands of the said Resorts, Inc., and with the

lands of the said Browning, et al, the following courses and distances:

(13) South 36° 54′ East 846 feet

(14) South 48° 28′ West 1415 feet to a corner common to the lands of the said subject owner, the lands of the said Courtright, et ux; thence, leaving the lands of the said Browning, et al, and with the lands of the said Courtright, et ux, the following courses and distances:

(15) North 63° 04′ West 870 feet

(16) South 41° 52′ West 256 feet to a point in the center of the said Township Route Number 318; thence, continuing with the lands of the said Courtright, et ux, and with the center of the said Township Route Number 318,

(17) South 31° 13′ East 69 feet to the place of beginning, containing 56.80 acres, more or less.

The bearings used herein are referenced to the Pennsylvania State Rectangular Grid System (North Zone), 1927 N.A. Datum.

It is the intent of the foregoing description to include the same land as that described in:

(1) A deed from Mary C. McCaffrey, widow, to Richard Thoma and Elsie Thoma, his wife, dated March 26, 1931 and filed for record March 27, 1931 in Deed Book 84, Page 553.

(2) A deed from W. L. DeVore and Rose M. DeVore, his wife, to Richard Thoma and Elsie Thoma, his wife, dated August 8, 1939 and filed for record October 19, 1940 in Deed Book 95, Page 520.

Both of the above deeds are found in the records of Pike County, Pennsylvania.

The said Richard Thoma died during December, 1943.

NAME AND ADDRESS OF
PURPORTED OWNERS

Elsie Thoma, widow
413 53rd Street
West New York, New Jersey

ESTIMATED JUST COMPENSATION $62,000.00

The gross sum estimated to be just compensation for the land hereby taken is $893,000.00

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 70-240

[Filed Jan. 31, 1973]

UNITED STATES OF AMERICA, PLAINTIFF

v.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, COMMONWEALTH OF PENNSYLVANIA, AND BENEDICT F. PASTORINI, ET AL., DEFENDANTS

AFFIDAVIT OF REV. DR. WILLIAM A. JANSON

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF PHILADELPHIA)

I, William A. Janson, being duly sworn according to law, depose and say as follows:

1. I am the president of the Southeastern Pennsylvania Synod of the Lutheran Church in America ("the Synod"), a Pennsylvania nonprofit corporation which is the owner of land involved in the above captioned condemnation proceedings. This affidavit is based either upon personal knowledge or information and belief.

2. A portion of the condemned property known as Camp Miller, and designated as Tract 1500 on the Corps of Engineers Project Map, is composed of approximately 82 acres of land which were purchased by the Synod in 1927. The construction of improvements essential to its use as a camp was begun immediately thereafter, and on the date of the condemnation there were approximately 55 structures in use on this Tract. These included, among others, 22 cabins, kitchen and dining facilities, staff quarters, an infirmary and administration facilities.

These structures were erected and utilized for the sole purpose of operating a summer camp for approximately 1450 boys each year. A staff of 68 persons operated the camp.

3. Another portion of the condemned property, known as Camp Hagan, and designated as Tract 2132 on the Corps of Engineers Project Map, is composed of approximately 40 acres of land which were purchased in 1937. The thirty-four structures being used on the condemnation date were erected over a period of years beginning in 1937 and ending in 1959. The types of structures at Camp Hagan are similar to those found at Camp Miller and they were used exclusively for the purpose of operating a summer camp for approximately 1400 young girls yearly. A staff of 68 persons operated this camp.

4. The third portion of the condemned property, known as Camp Ministerium, and designated as Tract 2122 on the Corps of Engineers Project Map, consists of approximately 184 acres of land which were purchased in 1945. This camp was constructed in the 10 year period from 1947 to 1959 and consisted of approximately 37 structures on the date of condemnation. These structures, which are similar to those provided at the other two camps, were used exclusively for family camping and accommodated approximately 600 persons a year. A staff of 32 persons operated the camp.

5. In order to provide a substitute for the camp facilities condemned by the Government, the Synod has acquired a large tract of land, at a cost of $321,000, in Bear Creek Township, Luzerne County. The Synod has already expended an amount in excess of $110,000 for engineering and architectural fees incurred in planning the proposed construction of substitute facilities. The new facilities will be functionally equivalent to those condemned by the Government, and these facilities will meet the state regulatory requirements promulgated since the erection of the condemned facilities.

6. The City of Philadelphia operates a residential camp facility on a 671 acre tract of land in Monroe and Pike Counties, Pennsylvania. This camp, Camp William Penn, is located in the same area, and has facilities similar to those provided by the Synod's camps. Camp William Penn has 75 structures and serves approximately 1450 Philadelphia children yearly.

7. The City of Philadelphia also operates Camp Larchwood, a residential camp located in Berks County on 120 acres of land leased by the City. Camp Larchwood serves approximately 400 Philadelphia children yearly.

8. The federal government as part of the Model Cities program, P.L. 89-754; 80 Stat. 1255, totally finances the operation of Camp Larchwood and also provides approximately $200,000 per annum to cover the cost of indigent Philadelphia children attending private camps.

/s/ William A. Janson
WILLIAM A. JANSON

SWORN and SUBSCRIBED before me this 22nd day of January, 1973.

/s/ [Illegible]
Notary Public
Philadelphia, Philadelphia Co.

My Commission Expires March 13, 1976

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 70-240 Civil

Tract No. 1500
Tract No. 2122
Tract No. 2132

[Filed Jan. 15, 1974]

UNITED STATES OF AMERICA, PLAINTIFF

v.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, COMMONWEALTH OF PENNSYLVANIA, AND BENEDICT F. PASTORINI, ET AL., DEFENDANTS

APPEARANCES:

For Plaintiff:	S. John Cottone United States Attorney Post Office Building Scranton, Pa. Peter H. Ruvolo Attorney William J. Kollins Attorney Department of Justice Washington, D.C.
For Defendant Southeastern Pennsylvania Synod of the Lutheran Church in America	John V. Bonneau, Esq. Peter M. Mattoon, Esq. H. Ober Hess, Esq. Ballard, Spahr, Andrews & Ingersoll 1035 Land Title Building Philadelphia, Pa. Joseph C. Kreder, Esq. Warren, Hill, Henkelman & McMenamin Scranton Electric Building Scranton, Pa.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 70-240 Civil

Tract No. 1500
Tract No. 2122
Tract No. 2132

UNITED STATES OF AMERICA, PLAINTIFF

v.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, COMMONWEALTH OF PENNSYLVANIA, AND BENEDICT F. PASTORINI, ET AL., DEFENDANTS

MEMORANDUM

Plaintiff, United States of America, has requested the court to make certain pre-trial rulings in the above captioned matter.

On June 15, 1970, the government condemned three recreational camps titled in the name of the Southeastern Pennsylvania Synod of the Lutheran Church in America. The camps were used by children during the summer months of each year. Following the condemnation two of the three camps were leased back to the defendant by the government for an annual rental. The camp program is conducted in the name of the Eastern Pennsylvania Lutheran Camp Corporation, a Pennsylvania nonprofit corporation, the board of directors of which is appointed by the president of the Southeastern Pennsylvania Synod of the Lutheran Church in America and the Northeastern Pennsylvania Synod of the Lutheran Church in America on a joint basis.

The camps are open to children without any restriction as to race, creed or color, nor is there any policy of

giving priority in registration to any religious denomination. Registrations are accepted on a first come first serve basis. The camps also serve children with mental, psychological, financial and other special needs.

The main issue before the court at this time is what standard is to be applied in determining "just compensation" for the property condemned. Defendant argues that the substitution of facilities doctrine is to be applied in this situation where a non-profit corporation supplies a public service. The government contends that only when a public governmental body is the condemnee is substitution a proper standard.

Defendant's land apparently has a special character. The land and improvements were specifically designed for camping purposes. The camps provide a service not only to those of the Lutheran faith but to children of all faiths and diverse backgrounds. However, the ownership of the camps is in a private organization.

Only in those cases in which the condemnee was a governmental public entity has the substitution doctrine been applied. Brown v. U.S., 1923, 263 U.S. 78; U.S. v. Certain Lands, 3 Cir. 1957, 246 F. 2d 823; U.S. v. Certain Property in Borough of Manhattan, 2 Cir. 1968, 403 F. 2d 800; U.S. v. Certain Property in Borough of Brooklyn, 2 Cir. 1965, 346 F. 2d 690; U.S. v. New York, 2 Cir. 1948, 168 F. 2d 387; U.S. v. Board of Education of Mineral County, 4 Cir. 1958, 253 F. 2d 760; Town of Clarksville, Va. v. U.S., 4 Cir. 1952, 198 F. 2d 238, *cert. denied*, 1953, 344 U.S. 927; Mayor and City of Baltimore v. U.S., 4 Cir. 1945, 147 F. 2d 786; City of Fort Worth v. U.S., 5 Cir. 1951, 188 F. 2d 217; Jefferson County v. Tennessee Valley Authority, 6 Cir. 1945, 146 F. 2d 564, *cert. denied*, 1945, 324 U.S. 871; U.S. v. Arkansas, 8 Cir. 1947, 164 F. 2d 943; U.S. v. Des Moines County, 8 Cir. 1945, 148 F. 2d 448, *cert. denied*, 1945, 326 U.S. 743; State of Washington v. U.S., 9 Cir. 1954, 214 F. 2d 33, *cert. denied*, 1954, 348 U.S. 862; California v. U.S., 9 Cir. 1948, 169 F. 2d 914; U.S. v. Los Angeles County, 9 Cir. 1947, 163 F. 2d 124; Woodville v. U.S., 10 Cir. 1946, 152 F. 2d 735, *cert. denied*, 1946, 328 U.S. 842; U.S. v. Certain Land in City of Red Bluff, N.D. Cal. 1961, 192 F. Supp. 725; U.S. v. 43.635 Acres of Land, D.C. Mo. 1960, 183 F. Supp. 168; U.S. v. 1.433 Acres of Land, D. Kans. 1947, 71 F. Supp. 854; U.S. v. 0.886 of an Acre of Land, E.D. N.Y. 1946, 65 F. Supp. 827. *See also* Just Compensation And The Public Condemnee, 1966, 75 Yale L.J. 1053; Level, Evaluation Of Special Purpose Properties In Condemnation Proceedings, 1971, 3 Urban Lawyer 428; 40 A.L.R. 3d 143.

The substitution standard is allowed a public condemnee because of the unique nature of the ownership, i.e., community property, and the necessity, legal or otherwise, to replace the facility. U.S. v. Certain Property in Borough of Manhattan, supra. A governmental unit has the responsibility to serve the public, and holds property in trust for the public welfare. When public property is lost through condemnation, the measure of compensation is the cost of providing the community with a necessary replacement. U.S. v. Certain Lands, 3 Cir. 1957, supra; U.S. v. Certain Property in Borough of Manhattan, supra. Unlike the private condemnee situation, the governmental condemnee, when there is no necessity to replace the facility, is entitled to little or no compensation since there is no loss suffered. U.S. v. Certain Lands, supra.

The governmental condemnee does not hold property for its own advantage, but solely for the public need. U.S. v. Certain Lands, supra. The loss is peculiar to the community and compensation is measured not in "value" but by the loss to the community. U.S. v. Certain Property in Borough of Manhattan, supra.

The defendant is not a governmental public condemnee, but a private religious organization. The property is not held and used exclusively for the public without any ad-

vantage to the defendant.[1] The camp program is conducted in the name of the Eastern Pennsylvania Lutheran Camp Corporation. The defendant is under no public obligation to replace the camp facilities. The fact defendant considers it a practical necessity to rebuild the camp is not unlike any other private condemnee who must out of a practical necessity rebuild a home, business place, or eleemosynary facility. The defendant can be made whole by using a valuation standard of compensation.

> ". . . Confronted with the occasional inadequacy of the 'market value' test and the general impracticability of any other, the courts have adopted a pragmatic solution. In certain instances, notably in the case of property held for eleemosynary or other nonprofit purposes, such as schools, churches and clubs (but not private dwellings), and public utilities, where property with a high value for the use to which it is being put would have a much lower market value because of the paucity or absence of buyers for that use, the courts consider value to the owner, sometimes finding it necessary to apologize for what is wrongly conceived to be a lapse from true doctrine by the rather obviously untrue statement that the property has 'no' market

[1] Although the religious distribution of the campers results from a first come first serve application policy, the following distribution of Lutheran and non-Lutheran campers from two camps, Miller and Hagan, is relevant:

	Lutheran	Non-Lutheran
1965	59%	41%
1966	60%	49% [sic]
1967	62%	38%
1968	64%	34% [sic]
1969	61%	39%
1970	43%	57%
1971	41%	59%
1972	45%	55%

Affidavit of Rev. Roy E. Gulliford at 7.

> value, 1 Orgel, supra, § 38; in such cases evidence of reproduction cost less depreciation is admitted, whether as showing value to the owner or as indicating what might be paid by a buyer if one existed." United States v. Certain Property Located in the Borough of Manhattan, 2 Cir. 1962, 306 F. 2d 439, 447.

The defendant can at any time cease to use the land as a camping facility, and can use it for any purpose it deems proper. A governmental body does not have such discretion without violating the public trust.

It is not a denial of equal protection to allow a substitution of facilities when a governmental condemnee is involved but not in the case of a private condemnee. When property is condemned, the condemnee must be indemnified for the loss. The market value standard of using comparable sales is most frequently employed to determine just compensation. When comparable sales are not available, such as in special character property as we have here, other methods of valuation are utilized, e.g., the capitalization of earnings or the reproduction cost minus depreciation standard. No one method of valuation is exclusive. U.S. v. Virginia Electric Co., 1961, 365 U.S. 624, 633; U.S. v. Certain Property Located in the Borough of Manhattan, 2 Cir. 1962, supra. The Supreme Court has approved the substitution standard as a proper method of valuation. Brown v. U.S., supra at 82-83.

A refusal to allow the defendant the cost of a substitute facility because its property is privately owned does not involve an invidious distinction, but a distinction on which is both proper and necessary. The loss by a governmental condemnee is a loss to the public generally, and the obligation or duty of a replacement is the responsibility of the public entity and ultimately the public. The private condemnee lacks the responsibility to replace the facility. The public through its governmental body is the recipient of compensation for the loss, while the private condemnee alone receives compensation for the loss. Finally, the private condemnee may terminate the substitute facility for the use intended at

any time, but the public condemnee cannot because of its public duty to continue the service.[2]

Upon presentation of proper evidence, defendant may utilize other standards of valuation, other than the comparable sales approach, to prove just compensation. Hickey v. United States, 3 Cir. 1953, 208 F. 2d 269, cert. denied 1954, 347 U.S. 919; U.S. v. 84.4 Acres of Land, W.D. Pa. 1963, 224 F. Supp. 1017, *rev'd*, 348 F. 2d 117; U.S. v. Certain Property Located in the Borough of Manhattan, 2 Cir. 1962, supra; U.S. v. Benning Housing Corporation, 5 Cir. 1960, 276 F. 2d 248; Fairfield Gardens, Inc. v. United States, 9 Cir. 1962, 306 F. 2d 167; U.S. v. 206.82 Acres of Land, M.D. Pa. 1962, 205 F. Supp. 91; 4 Nichols, The Law of Eminent Domain §§ 12.313, 12.32.

In Newton Girl Scout Council v. Massachusetts Turnpike Authority, Mass. 1956, 138 N.E. 2d 769, 773-775, involving the condemnation of a camping facility, the court speaks of similar valuation problems present here:

[2] "Here the evidence is without dispute that the school district must of necessity replace the buildings that the State destroyed by the taking. The school district is obligated and must have the additional classrooms in order to provide the facilities needed by the school, and consequently there is no way to do it and at the same time utilize the valuable improvements remaining on the 18.35 acres except by replacement.

"There is a fundamental distinction between obligation resting on the agency condemning public property, and that of condemning private property. This distinction lies in the obligation thereby imposed on the condemnee. For example, a private party owes no duty to the public to continue its operation either at its original location or elsewhere. It can move, it can stay, or it can liquidate as it alone sees fit. Not so with a school system charged with a legal obligation to the public. A school system suffering the loss of one of its schools by condemnation must replace that school when the facility is necessary to the education of its children as shown by the undisputed evidence in this case. This is the legally imposed duty on the school district, and it has no other choice." State v. Waco Independent School District, Tex. 1963, 364 S.W. 2d 263, 268. *See also* City of Wichita v. Unified School District No. 259, Kan. 1968, 439 P. 2d 162, 168; Jefferson County v. Tennessee Valley Authority, 6 Cir. 1945, 146 F. 2d 564, 565, *cert. denied*, 1945, 324 U.S. 871; Level, Evaluation of Special Purpose Properties In Condemnation Proceedings, supra at 431-432 and 439; *cf.* Joslin Co. v. Providence, 1923, 262 U.S. 668, 675.

"The general rule is that the measure of damages is the fair market value of the property actually taken at the time of the taking. . . . In determining fair market value, the effort is to determine " 'the highest price which a hypothetical willing buyer would pay to a hypothetical willing seller in an assumed free and open market." ' Epstein v. Boston Housing Authority, 317 Mass. 297, 299-300, 58 N.E. 2d 135, 137. All the uses to which the property is reasonably adapted may be considered. . . . Although its 'value for any special purpose is not the test * * * it may be considered, with a view of ascertaining what the property is worth in the market for any use for which it would bring the most.' Conness v. Commonwealth, 184 Mass. 541, 542-543, 69 N.E. 341. See Smith v. Commonwealth, 210 Mass. 259, 261, 96 N.E. 666; Olson v. United States, 292 U.S. 246, 255, 54 S. Ct. 704, 78 L.Ed. 1236.

"Under the authorities already cited, the Girl Scouts, in their attempt to show loss of market value, were plainly entitled to present evidence bearing on every use to which the property was adapted, including (but not limited to) the specialized use for which the property was being employed effectively at the time of the taking. It was open to the Girl Scouts (a) to prove the value of the property for use by a charitable or religious organization or for a school group, and the extent to which the taking had injured or prevented that use; (b) to show the extent of the market, if any, for properties adapted for such use; (c) to establish the general basis on which such properties change hands when they do change hands, the various elements of value which are given weight by organizations naturally interested in the acquisition of such properties, and the methods by which such properties are usually acquired; and (d) to present evidence of other similar relevant factors.

"It is not to be expected that the properties adapted for such a specialized use will have a very active market or that their market value can be

shown by sales of nearby comparable property. Once developed, such properties are rarely abandoned or sold. To assist the trier of the fact of value to reach a just result when such a property is taken by eminent domain, it frequently will be necessary to allow much greater flexibility in the presentation of evidence than would be necessary in the case of properties having more conventional uses. In such cases, for example detailed knowledge by expert witnesses of local prices of land for ordinary residential or commercial use may be far less helpful than knowledge of conditions (relevant to this particular type of property) over a wide geographical area and of the demand for and use of comparable specialized properties by a particular industry or class of users or customers. The property may be of a character where, within fairly wide limits, geographical location has less effect on its value than its adaptability for a particular use. The properties may be of a type, not frequently bought or sold, but usually acquired by their owners and developed from the ground up, so that the cost of land plus the reproduction cost (less depreciation where appropriate) of improvements may be more relevant than in the ordinary case.

"The practical problems inherent in the valuation of such properties have been recognized in the Massachusetts decisions, as well as in the authorities generally. Special opportunities for proof of value have long been afforded in cases where it is felt that there is no market value, in the sense in which, in most communities, market value is at all times reflected by a steady volume of sales or ordinary commercial and residential properties. The occasion for this difference in type of proof (permitting the use of valuation data other than those factors ordinarily bearing on market price) has been expressed in terms of absence of market value, see comprehensive discussion in Tigar v. Mystic River Bridge Authority, 329 Mass. 514, 517, 109 N.E.2d 148, or of market. See, for example, United States v. Miller,

317 U.S. 369, 374, 63 S.Ct. 276, 87 L.Ed. 336. The courts in these cases, however, may be doing no more than recognizing that more complex and resourceful methods of ascertaining value must be used where the property is unusual or specialized in character and where ordinary methods will produce a miscarriage of justice. In such cases, it is proper to determine market value from the intrinsic value of the property and from its value for the special purposes for which it is adapted and used. See Nichols, Eminent Domain (3d ed.) s. 12.32, especially at pages 134-136, and ss. 18.41[3], 18.42; Jahr, Eminent Domain, ss. 71, 78, 82 (specialty uses), 83, 84 (properties of non-profit organizations); Orgel, Valuation under Eminent Domain (2d ed.) ss. 30, 37-40, especially at pages 177-179, 181-183; Manify, Damages in Eminent Domain, 34 B.U.L.Rev. 146, 151-152; McCormick, Measure of Compensation in Eminent Domain, 17 Minn.L.Rev. 461, especially at pages 467-470.

"These unusual problems of proof of damages most frequently arise in cases of service-type properties like churches, convents, hospitals, country clubs, school and college premises and buildings of religious and charitable societies and similar organizations. . . .

"It is, of course, true that, where there is no market value, in the sense of a steady current of sales of similarly used properties in the vicinity, the burden is on the owner to show that it is impossible to prove the value of the property without using some mode of ascertaining value which does not depend on market value in this sense of the term. . . . In the present case, however, the Girl Scouts had amply shown that camps of this type were not commonly bought and sold."

See also Eminent Domain: The Problem of Damages Where Land Has Been Adapted to a Special Use, 1957, 37 B.U.L.Rev. 495.

Plaintiff's principal request for pre-trial rulings is whether the substitution standard is proper in this case. Both parties are in disagreement on other points because of their difference on the propriety of the substitution standard. The standard of valuation to be applied will depend largely on the proof presented.[3] Until then, the court will reserve ruling on the valuation standard or standards to be applied.

An appropriate order will issue.

/s/ [Illegible]
Chief Judge
Middle District of Pennsylvania

Dated: January 15, 1974.

[3] "There is no *one way* of valuing special purpose properties; each case will require special consideration. The rules respecting proof must afford some leeway if the owner is to receive constitutional indemnification." Level, Evaluation of Special Purpose Properties in Condemnation Proceedings, supra at 439.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 70-240 Civil

Tract No. 1500
Tract No. 2122
Tract No. 2132

[Filed Jan. 15, 1974]

UNITED STATES OF AMERICA, PLAINTIFF

v.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, COMMONWEALTH OF PENNSYLVANIA, AND BENEDICT F. PASTORINI, ET AL., DEFENDANTS

ORDER

In accordance with memorandum this date filed,

It is ORDERED that

1. The cost of substitute facilities is not a proper measure of compensation for the taking of defendant's property;

2. All other rulings relative to the valuation standard or standards to be applied are reserved.

/s/ [Illegible]
Chief Judge
Middle District of Pennsylvania

Dated: January 15, 1974.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 70-240

[Filed Apr. 24, 1974]

UNITED STATES OF AMERICA, PLAINTIFF

v.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, COMMONWEALTH OF PENNSYLVANIA, AND BENEDICT F. PASTORINI, ET AL., DEFENDANTS

AFFIDAVIT OF JOHN J. LEVKULIC

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) ss
)

John J. Levkulic, being duly sworn according to law, deposes and says as follows:

1.

Professional Background—I graduated from Pennsylvania State University in 1954 with the degree of Bachelor of Science in Civil Engineering. From June, 1954 to December, 1955 I was employed as an engineer at the U.S. Navy Shipyard in Philadelphia. From 1955 to 1957 I served in an engineering capacity with a United States Navy SeaBees Construction Battalion in Antigua, Puerto Rico and Cuba. In 1957 I took employment with Amporico Corporation in an engineering capacity connected with major construction projects in Puerto Rico and continued in that professional role until 1962. Since 1962 I have been with Robert F. Miller Associates, an engineering and architectural firm with offices in Pottsville and Tamaqua. I have been president of the firm since 1969. Our firm has on its staff six registered engineers, one registered architect and three

engineers with engineering degrees but who are not yet registered. I am a registered engineer in Pennsylvania and Puerto Rico and am a member of the Executive Board of the Pennsylvania Society of Professional Engineers.

In my professional capacity I have designed state parks, state highways, state buildings and public school buildings and have supervised the letting of many construction contracts. I have worked up and certified cost estimates on all public projects on which I have worked as an engineer and on most private projects as well. I have been involved in many state projects supported by Federal grants which grants were based on my cost estimates.

2.

Connection With Southeastern Pennsylvania Synod Camps Project—I, and other members of our firm working under my supervision, have been in charge of the engineering design and costing of camp facilities required by the Southeastern Pennsylvania Synod to take the place of Camps Miller, Hagan and Ministerium in the Tocks Island area of Monroe County. Our work has progressed to the working drawing stage and our compensation to date has been in excess of $128,000. Our design calls for relocating the camps at a site acquired by the Synod in Bear Creek for the length of at least one mile. Our work has given particular attention to providing substitute facilities for those existing at Camps Miller, Hagan and Ministerium on the Delaware River as of June 15, 1970. In that connection I have given attention to the costs involved in replacing such facilities and particularly to the additional costs resulting:

(a) From Government and other construction requirements applicable to new camps from which pre-existing camps were exempt,
(b) From the need to provide access to the new site,
(c) From the need to provide roadway and waterline interconnections within the site, and
(d) From the need to create a dam on Bear Creek to provide water facilities for aquatic programs at the new site.

All cost figures given in this affidavit represent my professional estimate as of December 1, 1972.

3.

Sewage Facilities—The three old camps provided for sewage disposal by the use of septic tanks. The Sewage Facilities Act, as administered by the Department of Environmental Resources, will not permit a new facility of the size required to replace Camps Miller, Hagan and Ministerium to use septic tanks. A complete sewage treatment plant and connecting sewer lines is an absolute requirement. The system and lines will cost $434,400 as compared with a cost of $22,000 for three septic tank systems with connecting lines. In addition, the sewer treatment plant will require maintenance expenses as listed below, none of which is required by the septic tank systems at the old camps:

Licensed operator at $150 per week for 16 weeks per year	$2,400.00
Electricity at $100 per month for four months per year	400.00
Chemicals at $150 per season	150.00
Miscellaneous repairs and maintenance expense at $500 per year	500.00
Total per year	$3,450.00

It thus appears that in order to create lawful functioning camp facilities an additional net capital cost of $412,400 is required for sewer facilities alone, plus an annual operating cost of $3,450 for the indefinite future. A tabulation of the items entering into the cost of the sewage treatment plant and connecting lines is attached as Exhibit A.

4.

Department of Environmental Resources Requirements and Requirements of American Standard National Plumbing Code, as Enforced by Luzerne County, as Affecting Buildings—Attached hereto as Exhibit B is a tabulation showing the list of buildings and outdoor facilities at Camp Ministerium as they existed on June 15, 1970. On this exhibit the numbers prefixed by A represent structures and those prefixed by X represent outdoor facilities, such as tennis courts, base ball and volley ball fields. Also attached, as Exhibit C, is a tabulation showing the list of buildings and outdoor facilities on Camp Miller at that date. The prefixes B and Y refer, respectively, to structures and outdoor facilities. Attached as Exhibit D is a tabulation showing the list of buildings and outdoor facilities at Camp Hagan on that date. The prefixes C and Z refer, respectively, to structures and outdoor facilities. Each of these exhibits shows the estimated cost of replacing such buildings and facilities as they were on that date, except that in some instances exact replacement of the item was no longer allowed by the regulations referred to. The extra cost involved in compliance is as follows:

A-1	Dining and recreation hall	$ 2,710.00
A-11	Staff house	2,100.00
B-1	Dining Hall	4,895.00
B-2	Recreation hall	2,430.00
B-9a	Wash house	3,640.00
B-9b	Wash house	2,580.00
B-15	Wash house	1,060.00
B-16	Wash house	2,800.00
C-1	Dining hall	4,635.00
C-2	Recreation hall	1,215.00
		$28,065.00

5.

American Camping Association Requirements Affecting Buildings—Certain requirements enforced by this Association through its accreditation procedure, particularly with respect to cabin floor space and plumbing fixtures, will add substantially to the cost of substituted facilities. The items of added cost of these requirements, again referring to the items tabulated on Exhibits B, C and D, are as follows:

A-7a	Campers cabins	
A-7b	Campers cabins	
A-7c	Campers cabins	
A-7d	Campers cabins	$ 50,500.00
A-11	Staff house	2,720.00
A-13	Staff house	2,720.00
B-6a	Campers cabin	
B-6b	Campers cabin	22,700.00
B-7a	Campers cabin	
B-7b	Campers cabin	
B-7c	Campers cabin	14,700.00
C-5a	Campers cabin	
C-5b	Campers cabin	
C-5c	Campers cabin	
C-5d	Campers cabin	62,920.00
		$156,260.00

6.

Substitution of Water Facilities—The old camps had frontage on the West side of the Delaware River totaling 5,115 feet, and from this access they had the use of the river for as much as 20 miles in each direction. Construction of a dam on Bear Creek on the new site will provide a small lake, a much inferior substitute, but it is all that can be reasonably managed. The proposed dam will provide 3,000 feet of frontage, inasmuch as the new camps will be located on both sides of the lake formed by it. This body of water will provide a 1400 straight linear foot pool for canoes, boats and other aquatic activities. The cost of the dam will be as follows:

Construction	$940,600.00
Erosion control to meet Department of Environmental Resources requirements	25,000.00
Soils engineering to satisfy similar requirements	35,000.00
	$1,000,600.00

A tabulation of the items involved in the cost of the construction of the dam, as above set forth, is attached as Exhibit E.

7.

Waterfront Facilities—To replace the waterfront facilities as they existed at the old camps on June 15, 1970 would involve the following costs:

Miller	$44,500
Hagan	17,900
Ministerium	4,800
	$67,200

A substitute facility at the new site could be provided at the lower cost of $47,100. A tabulation of this item is attached as Exhibit F.

8.

Roadways—The three old camps all had frontage on public highways which made it unnecessary to have access roads and which also served as a means of moving readily from camp to camp. In fact these highways passed directly through each camp and provided for ease of movement within each. The following highway distances existed within each camp:

Miller	—	1600 ft. on L.R. 45012
Ministerium	—	2800 ft. on L.R. 45012
Hagan	—	1600 ft. on T—515
		6000 feet

At the Bear Creek site the location is 1.7 miles from Pennsylvania Route 115, the nearest public highway. The cost of an access road from Route 115 to the boundary of the site of the proposed camps, constructed to comply with sedimentation and erosion control requirements of the Department of Environmental Resources, is $253,988.

Roads will be required within the camp site to get from one camp to another, in excess of the interior roadways of the three old camps. At the old camp, by reason of public highways passing through them, approximately 1800 feet of paved roadway was adequate. Within the new site approximately 13,200 of paved roadway will be required. The cost of the new interior roadways will be $578,677, whereas the direct replacement cost of 1800 feet of paved roadway at the old site would be only $40,000.

9.

Bridge—In view of the reduced availability of water at the new site it is necessary to use both sides of the

lake created by the proposed dam. To do so requires construction of a bridge meeting the requirements of the Department of Environmental Resources. Such a bridge will cost $76,000. Final plans for the bridge have been approved by the Department of Environmental Resources. A tabulation is attached as Exhibit G showing in detail the cost of both the bridge and the required roadway. Not included in the tabulation is a further item of $10,000 of cost which will be incurred in order to insure compliance with sedimentation and erosion control requirements.

10.

Power Lines—The three old camps had access directly on their internal boundary to public power lines. At the new site the lines will have to be brought a distance of 1.7 miles from the power lines on Route 115 at a cost of $47,000.

11.

Water System—To create a functional substitute for the water systems at the old camps would cost $478,905 whereas a direct replacement cost of the old systems would be $302,000. The differential is accounted for by two factors, one being the longer lines required in the new camps and the other being the matter of pipe size. As a matter of engineering practice it would be intolerable to replace exactly the old sizes. A tabulation of the detail of the water system substitute is attached as Exhibit H.

/s/ John J. Levkulic
JOHN J. LEVKULIC

SWORN TO and SUBSCRIBED before me this 9th day of August, 1973.

/s/ Shirley Fox
SHIRLEY FOX
Notary Public
Philadelphia, Philadelphia County
My Commission Expires:
February 13, 1975

EXHIBIT A

LUTHERAN CAMP
BEAR CREEK

SEWAGE SYSTEM

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
22,200 L.F.	8" Vitrified Clay Pipe	8.00	$177,600.00
9,300 L.F.	6" Vitrified Clay Pipe	7.50	69,750.00
72 Ea.	Manholes (Various Depths)	700.00	50,400.00
14 Ea.	Cleanouts	120.00	1,680.00
1	Sewage Treatment Plant Building & Equipment		125,000.00
1	Sedimentation and Erosion Control		10,000.00
	TOTAL		$434,430.00

EXHIBIT B

Proposed tabulations of bid items for Outdoor and Building Facilities Type A and X originally located at Camp Ministerium.

Facility No.	Qty.	Description	Unit Cost	Total Cost
A1	1	Dining & Recreation Hall	$147,188.00	$147,188.00
A2	—	(See Bldg. Facility B-18)	—	—
A3	1	Caretakers Residence at Maintenance	68,865.00	68,865.00
A4	1	Storage Shed at Maintenance (Combined with A5 & A15)	14,389.00	14,389.00
A5	—	(See Bldg. Facility A4)	—	—
A6	1	Camp Directors Residence at Hagan	68,556.00	68,556.00
A7	16	Campers Cabins	16,160.00	258,560.00
A8	1	Shower House	42,729.00	42,729.00
A9	—	Well and Pump House	Contract 2	—
A10	2	Garage at Maintenance	21,472.00	42,944.00
A11	1	Staff Cabin	44,046.00	44,046.00
A12	2	Classroom Building	39,887.00	79,774.00
A13	1	Staff Cabin	44,046.00	44,046.00
A14	1	Classroom Building	39,782.00	39,782.00
A15	—	(See Building Facility A4)	—	—
A16	7	Tent Platforms	1,419.00	9,933.00
X1	1	Baseball with Backstops and Home Plate	6,000.00	6,000.00
X2	1	Basketball	2,800.00	2,800.00
X3	1	Badminton	530.00	530.00
X4	1	Badminton	530.00	530.00
X5	1	Badminton at HAGAN	530.00	530.00
X6	1	Badminton at HAGAN	530.00	530.00
X7	—	Beach Front (Contracts 1 & 2)	—	—
X8	1	Flagpole	1,130.00	1,130.00

Total Cost Building and Outdoor Facilities, Types A and X for Camp Ministerium.

SUBTOTAL = $872,862.00

EXHIBIT C

Proposed tabulations of bid items for Outdoor and Building Facilities Type B and Y originally located at Camp Miller.

Facility No.	Qty.	Description	Unit Cost	Total Cost
B1	1	Dining Hall	$181,398.00	$181,398.00
B2	1	Recreation Hall	95,337.00	95,337.00
B3 C4	1	Infirmary	69,418.00	69,418.00
B4	1	Camp Director Residence	68,556.00	68,556.00
B5 a	1	Storage Shed at Maintenance	14,681.00	29,070.00
B5 b	1	Storage Shed at Maintenance	14,389.00	
B6	8	Campers Cabins	15,050.00	120,400.00
B7	14	Campers Cabins	18,494.00	258,916.00
B8	1	Shower House	44,337.00	44,337.00
B9	2	Wash House	14,900.00	29,800.00
B10	1	Office at Ministerium	24,968.00	24,968.00
B11	1	Visitors Latrine at Administration	12,595.00	12,595.00
B12 C10	1	Canteen with Main Office at Administration	41,998.00	41,998.00
B13	1	Arts and Crafts	40,279.00	40,279.00
B14	1	Staff Cabin	25,588.00	25,588.00
B15	1	Wash House	15,606.00	15,606.00
B16	1	Staff Cabin	25,588.00	25,588.00
B17	3	Barn at Maintenance	21,521.00	64,563.00
B18	1	Storage Shed at Maintenance (Combined with A2 and C13)	14,389.00	14,389.00
B19	3	Tent Platforms	1,419.00	4,257.00
B20	7	Tent Platforms	1,419.00	9,933.00
Y1	1	Tennis at Ministerium	3,500.00	3,500.00
Y2	1	Volleyball at Ministerium	800.00	800.00

Exhibit C—Continued

Facility No.	Qty.	Description	Unit Cost	Total Cost
Y3	1	Basketball	2,800.00	2,800.00
Y4	1	Badminton	530.00	530.00
Y5	4	Archery Range	650.00	2,600.00
Y6	1	Basketball	2,800.00	2,800.00
Y7	1	Outdoor Chapel	6,100.00	6,100.00
Y8	1	Baseball with Backstop and Home Plate	6,000.00	6,000.00
Y9	1	Volleyball	800.00	800.00
Y10	1	Tennis)	3,100.00	
Y11	1	Tennis)	3,100.00	6,200.00
Y12	1	Badminton	530.00	530.00
Y13	2	Shuffleboard	1,250.00	2,500.00
Y14	1	Basketball	2,800.00	2,800.00
Y15	1	Badminton	530.00	530.00
Y16	1	Baseball (No Backstop) with Home Plate	5,500.00	5,500.00
Y17	1	Volleyball	800.00	800.00
Y18	1	Amphitheater	8,500.00	8,500.00
Y19	—	Beachfront (Contracts #1 and #2)	—	—
Y20	1	Flagpole	1,130.00	1,130.00

Total Cost Building and Outdoor Facilities, Type B and Y for Camp Miller

TOTAL $1,231,416.00

EXHIBIT D

Proposed tabulations of bid items for Outdoor and Building Facilities Type C and Z originally located at Camp Hagan.

Facility No.	Qty.	Description	Unit Cost	Total Cost
C1	1	Dining Hall	$163,773.00	$163,773.00
C2	1	Recreation Hall	84,322.00	84,322.00
C3	1	Arts and Crafts	40,279.00	40,279.00
C4	—	(See Building Facility B3/C4)	—	—
C5	18	Camper Cabins	24,722.00	444,996.00
C6	2	Wash Houses	14,905.00	29,810.00
C7	1	Staff Cabin	25,588.00	25,588.00
C8	1	Staff Cabin	25,588.00	25,588.00
C9	1	Staff Cabin	25,588.00	25,588.00
C10	—	(See Building Facility	—	—
C11	1	Administrative Directors Residence	66,842.00	66,842.00
C12	6	Tent Platforms	1,419.00	1,419.00
C13	—	(See Building Facilities B18)	—	—
STP	1	Control Building, Sewage Treatment Plant	Contract 2	
Z1	1	Outdoor Chapel	6,100.00	6,100.00
Z2	3	Archery Range	650.00	1,950.00
Z3	1	Basketball	2,800.00	2,800.00
Z4	1	Shuffleboard	1,250.00	1,250.00
Z5	1	Tennis Court)	3,100.00	
Z6	1	Tennis Court)	3,100.00	6,200.00
Z7	1	Basketball	2,800.00	2,800.00
Z8	1	Volleyball	800.00	800.00
Z9	1	Volleyball	800.00	800.00
Z10	1	Baseball with Backstop and Homeplate	6,000.00	6,000.00

Exhibit D—Continued

Facility No.	Qty.	Description	Unit Cost	Total Cost
Z11	1	Baseball (No backstop) with Homeplate	5,500.00	5,500.00
Z12	1	Field Hockey/Soccer	19,500.00	19,500.00
Z13	—	Beach Front (Contracts #1 and #2)	—	—
Z14	1	Flagpole	1,130.00	1,130.00
Z15	1	Speedball	5,200.00	5,200.00
Z16	1	Kickball	1,300.00	1,300.00
Z17	1	Running Track	4,000.00	4,000.00
S1-29	L.S.	Signs	L.S.	3,700.00

Total Cost Building and Outdoor Facilities Types C and Z for Camp Hagan.

TOTAL = $984,330.00

EXHIBIT E

ITEMIZED COST ESTIMATE

DEER LAKE DAM, LUTHERAN CAMP CONTRACT NO. 1

ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1. EXCAVATION, UNCLASSIFIED	86,500	C.Y.	$ 2.00	$173,000.00
2. COMPACTED DAM EMBANKMENT	34,000	C.Y.	1.00	34,000.00
3. SPECIAL COMPACTION OF FILL	3,000	C.Y.	2.00	6,000.00
4. SAND, GRAVEL & COBBLE FILL	500	C.Y.	8.00	4,000.00
5. PLAIN CEMENT CONCRETE	1,500	C.Y.	110.00	165,000.00
6. REINFORCED CEMENT CONCRETE	2,160	C.Y.	150.00	324,000.00
7. OUTLET WORKS	ONE	L.S.	71,000.00	82,400.00
8. CRUSHED STONE	1,630	C.Y.	10.00	16,300.00
9. DUMPED RIP-RAP, 24" LAYER	2,450	C.Y.	8.45	20,700.00
10. HAND-PLACED RIP-RAP, 12" LAYER	5,800	C.Y.	19.25	111,650.00
11. VIT. CLAY PIPE, 6" I.D.	370	L.F.	8.25	3,050.00
12. FENCE (TY. 2 ROW)	200	L.F.	2.50	500.00
TOTAL				$940,600.00

EXHIBIT F

LUTHERAN CAMP
BEAR CREEK
CONTRACT NO. 2

December 1, 1972

BEACH CONSTRUCTION OF 3 BEACHES

Beach Area $\frac{500' \times 110'}{9}$ = 6,100 S.Y.

Protected by 540 L.F. of Concrete Curb

	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
49	6,100 S.Y.	Subgrade	$ 0.40	$ 2,440.00
50	6,100 S.Y.	4" Soil Bit. Base Course	2.00	12,200.00
51	6,100 S.Y.	6" Natural White Beach Sand	3.00	18,300.00
52	540 L.F.	10" x 24" Plain Conc. Curb	8.00	4,320.00
	L.F.	Landscaping, Erosion Control	2,000.00	2,000.00
	3 Ea.	Wharf 40' x 5' x 3" x 12" @.85 B.F.	820.00)	
		3 — 40' 4" x 12	350.00) =	3,510.00
		8 Piles (2D')	350.00)	

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	3 Ea.	Floating Diving Board	350.00	
	3 Ea.	Life Guard High Chair	350.00	2,100.00
		Incidentals		1,050.00
		TOTAL FOR 3 BEACHES		1,000.00
		EACH BEACH		46,920.00
		Each Beach Use		15,640.00
		3 BEACH TOTAL		15,700.00
				$47,100.00

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EXHIBIT G

LUTHERAN CAMP
BEAR CREEK

CONTRACT NO. 2

December 1, 1972

ROADWAY

	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	45 Ac.	Clear & Grub	$600.00	$ 27,000.00
2	115,000 C.Y.	Excavation	1.80	207,000.00
3	49,000 C.Y.	Borrow Excavation	1.50	73,500.00
4	54,000 S.Y.	2½" ID—2A	1.80	97,200.00
5	17,500 S.Y.	6" Bitu. Conc. Base Course	3.80	66,500.00
6	39,000 S.Y.	4" Bitu. Conc. Base Course	2.70	105,300.00
7	57,000 S.Y.	4" 2A Mod. Stone Agg.	0.85	48,450.00
8	57,000 S.Y.	Subgrade	0.30	17,100.00
9	29,500 S.Y.	6" Select Material Surface	1.25	36,875.00
10	20,000 L.F.	8' Shoulder	0.80	16,000.00
11	15,000 L.F.	6' Shoulder	0.70	10,500.00

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12	9,200 L.F.	3' Shoulder	0.50	4,600.00
13	46,000 L.F.	2.5' Shoulder	0.45	20,700.00
14	3,500 L.F.	Guard Rail	3.00	10,500.00
15	125 L.F.	72" Reinforced Cement Conc. Pipe	80.00	10,000.00
16	510 L.F.	48" Reinforced Cement Conc. Pipe	35.00	17,850.00
17	280 L.F.	36" Reinforced Cement Conc. Pipe	27.00	7,560.00
18	140 L.F.	30" Reinforced Cement Conc. Pipe	25.00	3,500.00
19	230 L.F.	24" Reinforced Cement Conc. Pipe	19.00	4,370.00
20	1,500 L.F.	18" Reinforced Cement Conc. Pipe	14.00	21,000.00
21	14 Ea.	R.C.C. Headwalls	250.00	3,500.00
22	7,000 L.F.	Drainage Swales & Ditches	1.50	10,500.00
23	20 Ea.	Pipe End Sections	70.00	1,400.00
24	22 Ton	Calcium Chloride	80.00	1,760.00
25	1 Ea.	Bridge	L.S.	76,000.00
		TOTAL OF ABOVE		$898,665.00

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EXHIBIT H

LUTHERAN CAMP
BEAR CAMP

WATER SYSTEM

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1,000 L.F.	6" Cast Iron Pipe	$ 10.00	$ 10,000.00
3,550 L.F.	6" Cast Iron Pipe	10.00	35,500.00
11,400 L.F.	4" Cast Iron Pipe	6.70	76,380.00
5,800 L.F.	4" Cast Iron Pipe	6.70	38,860.00
300 L.F.	3" Cast Iron Pipe	5.30	1,590.00
1,200 L.F.	2" Cast Iron Pipe	4.00	4,800.00
8,000 L.F.	1" Copper Pipe	4.00	32,000.00
5 Ea.	Drinking Fountains	640.00	3,200.00
9 Ea.	6" to 8" Gate Valve & Valve Box	300.00	2,700.00
9 Ea.	3" to 4" Gate Valve & Valve Box	140.00	1,260.00
24 Ea.	1" to 2" Gate Valve & Valve Box	60.00	1,440.00
3 Ea.	Pumphouse	4,725.00	14,175.00
3 Ea.	Well & Pumphouse Equipment	14,000.00	42,000.00
1 Ea.	30,000 Gal. Storage Tank Complete	65,000.00	65,000.00
2 Ea.	50,000 Gal. Storage Tank Complete	75,000.00	150,000.00
	TOTAL		$478,905.00

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 70-240

[Filed Apr. 24, 1974]

UNITED STATES OF AMERICA, PLAINTIFF

v.

564.54 ACRES OF LAND, MORE OR LESS SITUATE IN MONROE AND PIKE COUNTIES, COMMONWEALTH OF PENNSYLVANIA, AND BENEDICT F. PASTORINI, ET AL., DEFENDANTS

AFFIDAVIT OF REV. ROY E. GULLIFORD

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF PHILADELPHIA)

The Reverend Roy E. Gulliford, being duly sworn according to law, deposes and says as follows:

1.

Identity of Affiant—Since March 1, 1970, I have been Executive Director of Camps Miller, Hagan and Ministerium which until June 15, 1970, were owned by the Southeastern Pennsylvania Synod of the Lutheran Church in America, and operated on its behalf. In my capacity as Executive Director, I have had complete responsibility for, and oversight of, the operation of these camps, including their programs and policies, as well as all budgetary, accounting and financial matters.

2.

Site Location—These three camps were, and Camps Hagan and Ministerium still are, located directly upon the Delaware River in Monroe County, Pennsylvania at

Shawnee on the Delaware. For many decades the aquatic activities have been the core of their program. The river front was well equipped with landings and beaches for swimming and canoeing. Our equipment inventory includes 25 canoes which are constantly and extensively used for trips for which the location is unusually suitable, the Delaware being safely and easily navigable by canoe for at least 20 miles in each direction. It includes in addition 12 playaks and six rowboats actively used in the aquatic programs. The interior of the camps fronts on a paved public highway which makes the sites readily accessible with a minimum of driveway and public utility line construction inside the camp limits.

3.

Condemnation and Lease Back—These three camps were condemned by the United States on June 15, 1970. The structures on Camp Miller were extensively vandalized and promptly razed, rendering it of no further use as a camp after the 1970 season. Following the condemnation Camps Hagan and Ministerium were leased back to us by the United States of America at a rental of $15,600 per year, and the camp program has continued at Camps Hagan and Ministerium without interruption to the present date.

4.

Church Affiliation and Financial Support—Prior to condemnation the camps were titled in the name of the Southeastern Pennsylvania Synod of the Lutheran Church in America. The camp program, however, is conducted in the name of the Eastern Pennsylvania Lutheran Camp Corporation, a Pennsylvania nonprofit corporation, the board of directors of which is appointed by the president of the Southeastern Pennsylvania Synod of the Lutheran Church in America and the Northeastern Pennsylvania Synod of the Lutheran Church in America on a joint basis. This corporation is the agency of both synods for the purpose of conducting the camping program and is financially supported by both. Direct synod financial support by appropriations for operating expenses in recent years has been:

1965	$13,746
1966	15,030
1967	16,026
1968	14,627
1970	14,450
1971	23,003
1972	28,228
1973	28,228

5.

Camp Eligibility—For more than 40 years both Camps Miller and Hagan have served boys and girls from age 8 to age 16. There has never been any restriction on the basis of race, creed or color, nor is there any policy of giving priority in registration to any religious denomination. Registrations are accepted strictly on a first come first served basis. Camp Ministerium has for more than ten years been operated as a small group camp for boys and girls from age 9 to 17 with no restrictions as to race, creed or color, and no policy of giving priority to the members of any religious denomination. All applicants are accepted on a first come first served basis and, in fact, diversity is essential to meaningful small group camping.

6.

Special Need Campers—Determined effort has always been made to serve children with special needs, whether mental, psychological or financial. Among these children are the mentally retarded at White Haven State School, White Haven, Pennsylvania, the psychologically disturbed children at Silver Springs School, Plymouth Meeting, Pennsylvania, the poor boys sent to camp by the Tri-Square Masonic group, and the poor children who come to camp under our own Campership Program.

In the case of White Haven, we have had in the 1973 season seven severely retarded children for whom the School pays our regular rates, notwithstanding their care must be very individual and therefore very expensive to us.

In the case of Silver Springs, we have had 20 disturbed children in the 1973 season. Again the School pays standard rates notwithstanding the special care required.

In the case of the Tri-Square Masonic program we have had the following utilization paid for at standard rates by that organization:

1969	43 boys
1970	38 boys
1971	65 boys
1972	55 boys
1973	42 boys

In our own Campership Program, we have had the following numbers in recent years, which represent about 10% of our total enrollment volume:

1970	92 underprivileged campers for 149 weeks
1971	106 underprivileged campers for 161 weeks
1972	115 underprivileged campers for 208 weeks
1973	161 underprivileged campers for 239 weeks

These children are largely sent to us by child care agencies in eastern Pennsylvania, principally in Wilkes Barre, Scranton, Allentown, Bethlehem, Easton and Philadelphia. The cost of these children is met by a special fund raising effort which I conduct among individuals, service clubs, Lutheran congregations and wherever I can interest people in helping children in this way. Additional funds are raised by the special efforts of the president of the Southeastern Pennsylvania Synod of the Lutheran Church in America.

7.

Racial and Religious Distribution—We do not keep records showing separately white and non-white enrollments. My observation, however, is that during my tenure from 10 to 15% of our campers are non-white, and that about 5% of our counsellor staff is non-white. Religious distribution figures have been maintained for Camps Miller and Hagan since 1965 and they show the following:

	Lutheran	Non-Lutheran
1965	59%	41%
1966	60%	49%
1967	62%	38%
1968	64%	34%
1969	61%	39%
1970	43%	57%
1971	41%	59%
1972	45%	55%

As stated above, no racial or religious group is favored in the matter of admissions. The foregoing distribution results from the application of a first come first serve policy except that the special need groups to which I have referred are assured priority.

8.

Fees Paid by Campers—The schedule of weekly fees prevailing over the last ten years is as follows:

	Lutheran	Non-Lutheran
1963	$30	$32
1964	30	32
1965	32	34
1966	32	34
1967	36	38
1968	36	38
1969	45	47
1970	45	47
1971	45	55
1972	49	59
1973	49	59

It should be noted that when we receive contributions from their sponsors, all Campership children are admitted at the lower rate regardless of church affiliation. The foregoing fees fall far short of meeting the expenses of operation. The following figures are illustrative and in connection with them it is to be noted that the expense figures shown do not include anything for depreciation or general administrative overhead:

1969—Fees and contributions in lieu of fees received	$191,782.87
Operating expense	205,738.93
1970—Fees and contributions in lieu of fees received	151,942.84
Operating expense	175,521.21
1971—Fees and contributions in lieu of fees received	121,031.00
Operating expense	179,582.00
1972—Fees and contributions in lieu of fees received	122,611.00
Operating expense	177,545.00

9.

Comparison with Camp William Penn—This camp is owned by the City of Philadelphia and is located in Monroe and Pike Counties, Pennsylvania, about nine miles north of Marshalls Creek. It is managed under the direction of Henry Windish, Administrative Assistant to the Recreation Commissioner of the City of Philadelphia. It is comparable to the combined Camps Hagan and Ministerium as presently operated. Some points of comparison applicable in the current year are as follows:

Length of season:	
William Penn	8½ weeks
Hagan and Ministerium	9 weeks
Average campers per week:	
William Penn	320
Hagan and Ministerium	335
Operating budget per season:	
William Penn	$129,000
Hagan and Ministerium	177,500

In connection with the foregoing cost and budget figures, it should be noted that Camp William Penn has some operating expenses taken care of outside of its budget. For example, all its laundry is done in Philadelphia prisons at no cost. All of its motor vehicles are supplied and maintained by the City at no cost. Mr. Windish's salary is paid by the Philadelphia Department of Recreation as is his office overhead. There are some differences also in its program. William Penn has no canoes and no aquatic activities other than swimming on the lake on which it is located. Its counsellors also are on a different qualification and compensation scale. At Hagan and Ministerium all counsellors (except for five high school seniors) are high school graduates at least and are paid a minimum of $375 per season, whereas at William Penn, 41 of 90 counsellors have not finished high school and those who have not finished high school are paid $200 per season.

10.

Government Assistance—Our camps are eligible for participation in the U.S. Department of Agriculture Special Milk Program which reimburses us at the rate of two cents per half pint of milk served persons at our camp under 21 years of age. This subsidy amounts to approximately $1,200 per year. A copy of an illustrative voucher form is attached as Exhibit A.

We are also eligible for U.S. Department of Agriculture surplus food and through this program receive such provisions as peanut butter, rice, flour, oatmeal and the like. What we receive depends upon the quantities of the various surplus items available. They vary widely. The monetary value of commodities received in recent years is:

1971	$2,249.00
1972	1,935.00
1973	2,189.50

Eligibility for this program requires full compliance with Title VI of the Civil Rights Act of 1964 which, according to the agreement entered into between our camps and the Commonwealth of Pennsylvania as administrator for the U.S. Department of Agriculture, requires that "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity of recipient agency to which assistance is provided by the United States Department of Agriculture. Admission policies are understood and agreed by recipient agency to be a part of such programs and activities." Our camps have never violated these conditions nor have they ever been challenged with having done so. A copy of the agreement and related materials is attached as Exhibit B.

The real estate on which the camps operated has always been exempt from township, county and school district real estate taxes because the camps are "institutions of purely public charity."

11.

Public Demand—There is a growing call for the services which our camps render. For most of our regular sessions there are waiting lists which cannot be taken care of. Demand from specialized groups is also mounting. The White Haven State School desires that we operate a day camp for 30 to 40 retarded children. The Luzerne County Child Development Council requests us to accept 75 to 100 emotionally and physically handicapped children in a day camp program.

/s/ Roy E. Gulliford
ROY E. GULLIFORD

SWORN TO and SUBSCRIBED before me this 9th day of August, 1973.

/s/ Shirley Fox
SHIRLEY FOX
Notary Public
Philadelphia, Philadelphia County
My Commission Expires:
February 13, 1975

FORM APPROVED OMB NO. 40-R2846

FORM FNS-807 (4-73) U.S. DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE

REIMBURSEMENT VOUCHER

SPECIAL MILK PROGRAM

(SPECIAL SUMMER PROGRAM)

PLACE "X" IN BOX IF THIS IS AN ADJUSTED VOUCHER AND PREVIOUSLY SUBMITTED VOUCHER HAS BEEN PAID FOR REPORTING MONTH. ☐

Check for accuracy and any changes that are necessary.

1. AGREEMENT NO. 42 011 54661000

2. NAME & ADDRESS OF SCHOOL FOOD AUTHORITY OR SPONSOR
EASTERN PA CAMP CORP
BOX 3005
READING PA 19604

3. NAME AND ADDRESS OF SCHOOL, INSTITUTION OR CAMP

4. PERIOD COVERED BY THIS REPORT — MONTH (21 22) YEAR (23)

5. TOTAL NO. OF OPERATING DAYS THIS MONTH (24 25)

6. AVERAGE DAILY ATTENDANCE (26 27 28 29 30 31)

7. Number of ½ pints purchased ..... (32 33 34 35 36 37 38)

8. Number of ½ pints served to:
(a) Adults ..... (39 40 41 42)
(b) Children *(Item 7 minus 8(a))* ..... (43 44 45 46 47 48 49)

9. Unit cost of ½ pint of milk *(Paid to supplier after discount)*
(a) Flavored ..... Whole cents . tenths (50 51 52)
(b) Unflavored .... Whole cents . tenths (53 54 55)

10. Unit charge to child per ½ pint
(a) Flavored ..... (56 57 58)
(b) Unflavored .... (59 60 61)

FOR FNS USE ONLY
Adjusted voucher code ..... (77 78) [ø][1] (79 80)

11. I CERTIFY that to the best of my knowledge and belief, this voucher is true and correct in all respects, that records are available to support this voucher; that it is in accordance with the terms of existing Agreement(s); and that payment therefor has not been received.

DATE OF PREPARATION	TITLE	SIGNATURE OF SPONSOR

ALL RECEIPTS, INVOICES, AND OTHER EVIDENCE OF PURCHASE MUST BE RETAINED AND AVAILABLE FOR FUTURE AUDIT FOR A PERIOD OF 3 YEARS AND 3 MONTHS AFTER THE END OF THE FISCAL YEAR TO WHICH THEY PERTAIN.

USE FOR SPECIAL SUMMER PROGRAM ONLY

INSTRUCTIONS

SPECIAL NOTE: AN ADJUSTED VOUCHER completely voids all previous vouchers for the same month. Therefore you should include ALL of your reporting data for the entire month's operation.

Submit original and one copy to Finance and Program Accounting Division, Food and Nutrition Service, USDA, Washington, DC 20250 not later than the 10th of the month following the month covered by the voucher. A copy must also be kept by the sponsor. Record all entries to the right in each group of boxes.

Report data for one calendar month only. Amount of reimbursement will be computed by USDA, based on rates in effect. YOUR CLAIM WILL BE RETURNED FOR CORRECTION if not properly completed. BE SURE TO SIGN THIS VOUCHER BEFORE MAILING TO AVOID DELAYING YOUR REIMBURSEMENT CHECK.

ITEM

3 Type or print as shown in Schedule A of the agreement.

4 Enter the number of the month and year this voucher covers.

Example: May 1973 = [0][5] [7][3]
Nov. 1973 = [1][1] [7][3]

5 Enter actual number of days milk was served.

6 Schools: Enter actual average attendance (not enrollment) for each school day. The school administrator's office determines this from attendance records.

9 Enter the actual price per half-pint of milk paid to milk distributor after discount. Show price in terms of cents not dollars (example: 5 4/10 cents. Report as [0][5][4] Do not include any charge for equipment purchases or rentals.

10 Enter the charge to children per half-pint of milk. Show charge in terms of cents not dollars (example: 2 cents - reports as [0][2][0]) If milk is sold on other than a daily basis, enter average charge per half-pint.

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PROPERTY & SUPPLIES
BUREAU OF GOVERNMENT DONATED FOOD
2221 Forster St., P.O. Box 3361
Harrisburg, Penna. (17125)
Tele: (717) 787-2940

March 1, 1973

SUBJECT: Availability of Donated Commodities for Summer Camps for children - 1973 Camping Season

TO: All Sub-D.A.'s Serving Summer Camps
All Summer Camp Recipients
All Field Personnel

This is to advise that it is expected the following foods will be available for distribution to eligible non-profit summer camps for children during the 1973 camping season. The rates of distribution are on the basis of one eligible child camper per month for three meal a day camps and will be adjusted for camping periods of less than one month and for those camps that serve less than three meals daily.

Butter	1#		
Cornmeal	1#	Rice	1#
A.P. Flour	2#	Veg. Short.	1#
		Non-Fat Dry Milk	1#
		Rolled Oats	1#
Dry Beans	1#	*Peanut Butter	3/4#
		*Canned Meat	12#

*Restricted Rate

NOTE: This listing may be augmented with additional food varieties or some of the varieties of commodities may be deleted . . .

Summer camp sponsoring agencies are reminded that only non-profit summer camps for children of high school age or below are eligible to participate in the receipt of donated commodities. Additionally, summer camp sponsoring agencies are required to comply, in every detail, with the provisions of Title VI of the Civil Rights Act of 1964, concerning non-discrimination in Federally-assisted programs of the United States Department of Agriculture.

Summer camps receiving commodities must provide for adequate storage and proper utilization of all donated foods received. Records of receipts, utilization and current inventory of all donated foods must be maintained at the campsite and at least one knowledgeable person must be available at all times to aid representatives of this Bureau and personnel of the United States Department of Agriculture in completing required inspection reviews of the camp's feeding program.

All donated foods in inventory at the close of the camping season must be returned to the issuing sub-distribution facility immediately upon the close of the camp for the season. Also, the camp is required to provide this Bureau with an end-of-camp season close-out inventory report of residual supplies of Donated Commodities.

Summer camps which desire to receive commodities may employ food service companies to conduct their feeding operation, providing that such services are contracted for only on a fee-for-service basis and contracts are approved, before receiving commodities, by the New York Regional Office, Food and Nutrition Service, United States Department of Agriculture and this Bureau.

If additional supplies of unrestricted commodities are needed, please contact this Bureau, advising the quantity of each commodity desired and the name and agreement number of the camp. Every effort will be made to supply you with the quantities of those foods that you indicate you can properly store and use without waste.

Please complete, in their entirety, all three copies of the enclosed agreement forms for the receipt of donated foods during the 1973 camping season. All three copies of each of these forms must be returned to this Bureau no later than April 19, 1973. The attached copies of the summer camp Questionnaire must also be completed in triplicate and all three returned with the completed agreement forms.

Best wishes for a most successful summer camp activity in 1973.

Warren M. Vann, Jr.

EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PROPERTY AND SUPPLIES
BUREAU OF GOVERNMENT DONATED FOODS
PSGDF-111 REV. 8-71

AGREEMENT NO. 3 2 5

AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE RECIPIENT AGENCY FOR COMMODITIES DONATED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

The below-named Recipient Agency hereby makes application for commodities donated by the United States Department of Agriculture to the Commonwealth of Pennsylvania.

The Recipient Agency is: (Check Type of Agency)

☒ A tax supported public, or a tax-exempt private, agency (other than a public or private school) operating a non-profit child feeding program such as a child care center, summer camp, or playground (underline type) and is serving 225 (Average number) children daily.

☐ A non-penal tax supported public, or a non-penal tax-exempt (non-profit) private charitable institution with _____ persons residing therein (not including staff or paid personnel).

The Recipient Agency hereby agrees to the following terms and conditions:

1. Commodities received under this agreement will be used solely for the benefit of those persons served or assisted by the recipient agency and will not be otherwise disposed of without prior written approval of the State Agency. Under no circumstances will U.S.D.A. commodities be sold or traded.

2. A quantity of any commodity donated for use by any recipient agency or recipient may be transferred by the sub-distributing agency or by the recipient agency to bona fide experimental or testing agency, or for use in workshops, for demonstrations or tests relating to the utilization of such commodity by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the State Agency.

3. Commodities will be requested and accepted only in such quantities as can and will be equitably distributed and fully utilized by recipient agencies but not to exceed the rates established by the United States Department of Agriculture. Commodities shall not be accepted by any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of commodities.

4. As commodities become available for donation, the State Agency will notify sub-distributing agencies regarding the commodities, the class or classes of recipient agencies or recipients eligible to receive them and any special terms and conditions of donation for distribution which is attached to a particular commodity in addition to the general terms and conditions set forth herein. Every attempt will be made to deliver commodities in accordance with requested schedules. However, the State Agency shall not be responsible for delays in deliveries or for non-delivery of commodities due to any cause.

5. Commodities not distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the State Agency. However, commodities may be transferred between recipient agencies upon the authorization of the State Agency if determined to be in the best interest of the distribution program.

6. Sub-distributing agencies may require recipient agencies to pay part or all of the within State cost of distribution through a system of charges assessed by distributing or sub-distributing agencies. Any system of assessments operated by the sub-distributing agency shall have the prior approval of the State Agency and be subject to review by the Regional Office, Food and Nutrition Service, United States Department of Agriculture. The charges assessed shall be reasonable in relation to the services provided and the funds collected shall be used solely to pay storage, transportation, minor losses, damage or damage claims and other administrative expenses all in the operation of the donated food program. Funds accruing from the sale of containers, salvage of commodities, etc., will also be accounted for as outlined above. Receipts and expenditures of funds so accrued shall be reviewed by the State Agency periodically, but at least once each fiscal year, to determine that fund balances are not in excess of program needs.

7. If a recipient agency improperly distributes or uses any commodity or causes loss of or damage to a commodity through its failure to provide proper storage, care of handling, a claim in favor of the sub-distributing agency shall arise and recipient agency shall be subject to replacing the commodity in its distribution in kind, or pay the value of the commodity as determined by State Agency.

8. Sub-distributing agencies, and recipient agencies may employ commercial or institutional facilities to process commodities by converting them into different end products or by re-packing them. When this is done, sub-distributing agencies and recipient agencies shall be required to enter into written agreements with such processing facilities. All agreements for processing donated commodities must be submitted to the State Agency for review and approval with subsequent transmittal to the United States Department of Agriculture for approval. Donated foods may not be reconsigned to use by the processor without prior approval of the State Agency. Processing agreements shall provide as a minimum that the processing facility shall:

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EXHIBIT B

BUREAU OF GOVERNMENT DONATED FOOD
PSGDF-111 (REV. 3-71)

IF FOR SUMMER CAMPS, HEAD START OR TITLE I PROGRAMS COMPLETE THE FOLLOWING:

Sponsoring Agency: Eastern Pa. Lutheran Camp Corporation
Address: Box 3005
City: Reading, Pa.
Telephone No.: 215-375-0852 Zip Code: 19604
County: Berks

Name Program Activity: Camps Miller-Hagan & Ministerium
Opening Date: 6/24/73
Closing Date: 8/25/73
Location of Activity: Shawnee-On-Delaware
County: Monroe

Persons to be contacted during program activity:
Mr. George Rettstadt
Telephone No.: 717-421-6974

Persons to be contacted during winter months:
Rev. Roy E. Gulliford
Telephone No.: 215-375-0850

15. The recipient agency assures the United States Department of Agriculture and the Pennsylvania State Bureau of Government Donated Food that it now complies with and shall in the future comply with all requirements imposed by or pursuant to the Civil Rights Act of 1964 and the USDA Regulations (7 CFR Part 15), including any subsequent amendments, issued to effectuate that Act. Compliance will be consistent with the objective that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity of recipient agency to which assistance is provided by the USDA. Admission policies are understood and agreed by recipient agency to be a part of such programs and activities. Recipient agency agrees to be obligated by this assurance as long as it receives assistance hereunder or retains possession of any assistance provided by the USDA or the Bureau of Government Donated Food. Should recipient agency fail to comply with this assurance, the United States or the Bureau of Government Donated Food shall have the right to seek its enforcement by judicial or any other means authorized by law. Federal financial assistance is extended under this agreement in reliance on the representations made herein.

"Except that any termination of this agreement for non-compliance with Title VI of the Civil Rights Act of 1964 shall be in accordance with applicable laws and regulations."

The Bureau of Government Donated Food reserves the right to discontinue immediately further shipments of United States Department of Agriculture donated foods to a Donee Agency which fails to comply with the general intents and purposes set forth in this agreement, or any instructions issued pursuant hereto...

Either the Bureau of Government Donated Food or the United States Department of Agriculture, or both, shall have the right to take further action through available means when considered necessary, including prosecution under applicable State and Federal statutes or other judicial means of enforcement.

U.S.D.A. commodities will not be made available to agencies that practice discrimination in service — facilities or employment to persons because of race, color or national origin.

16. The sub-distributing agency, recipient agency, or the State Agency may terminate this agreement by giving thirty (30) days notice in writing to the other party. The State Agency may cancel this agreement immediately upon receipt of evidence that the terms and conditions thereof have not been fully complied with by the sub-distributing agency or recipient agency. Subject to such notice of termination or cancellation of the agreement, the sub-distributing agency or recipient agency agrees to comply with the instructions of the State Agency either,

    a. to distribute all remaining inventories of commodities consigned by the State Agency in accordance with the provisions of this agreement, or

    b. to re-assign such inventories to the State Agency, and to transmit such reports as required by the State Agency, to record disposition of such inventories.

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EXHIBIT B

BUREAU OF GOVERNMENT DONATED FOOD
PSGDF-111 (REV. 3-71)

APPROVED

PENNSYLVANIA DEPARTMENT OF PROPERTY AND SUPPLIES
Bureau of Government Donated Food
2221 Forster Street
Harrisburg, Pennsylvania 17125
Telephone No. 717-787-2940

By _____

DIRECTOR
(Title)

Date _____

NAME OF SPONSORING AGENCY
Eastern Pa. Lutheran [illegible]
Address Box 3005
Reading, Pa. [illegible]
Telephone No. 215-375-0852

By _____
(Signature – authorized agency official)

Roy E. Gulliford
(Please type name of agency official)

Executive Director
(Title)

Date 4/10/73

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EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PROPERTY & SUPPLIES
BUREAU OF GOVERNMENT DONATED FOOD
2221 Forster Street-P.O. Box 3361
Harrisburg, Pa. 17125 Tel: No. (717) 787-2940

QUESTIONNAIRE FOR DONATED FOODS FOR 1973 SUMMER CAMP SEASON

1. Name of Sponsor Eastern Lutheran Camp Corporation

Address: Box 3005 City Reading, Pa. Zip 19604

Telephone No. (Area Code) 215-375-0850 County Berks
(Mail will be sent to above address, unless advised otherwise)

2. Name of Camp Miller-Hagan - Ministerium

Address: River Road City Shawnee-On-Delaware, Pa Zip 18356

Telephone No. (Area Code) (717) 588-6651 (717) 421-6461 County Monroe

3. Type of Camp: (Check one): (X) Non-Profit ( ) Profit
(Check one): (X) Children only ( ) Adults ( ) Children and Adults

4. Does Camp employ a Food Service Company? (X) YES ( ) NO
Name of Food Service: Mr. George Rettstadt

5. Camp Operation: Information must be based on CHILDREN POPULATION only of High School age or below (NO ADULTS). Dates children officially arrive & depart - Not preopening & post closing activity.

A - Camping period: FROM 6/24/73 TO 7/25/73
B - Number of weeks:
C - Camp capacity: 400
D - Average daily attendance of eligible children campers: 375
E - Total number of meals served per day: CIRCLE ONE 1 2 (3)

6. Please indicate below the names of two knowledgeable persons who will be available at the camp site to maintain required records and furnish pertinent information, at the site, to Federal and/or State inspectors.

Rev. Roy E. Gulliford (NAME) — Executive Director (TITLE)
Mr. George Rettstadt (NAME) — Food Service (TITLE)

7. Are you receiving or do you intend to apply to any other State of Federal Agency for donated Commodities? ( ) YES (X) NO
If (YES) Indicate Agency:

8. I certify that the information furnished is true and accurate. I have received, read and agree, without exception, to abide by all Federal/State Regulations and procedures and any amendments thereto.

I agree that any failure on the part of the camp to comply will lead to a claim being made, by the State distributing agency, and on such claim demand I agree to make such restitution as will be required.

Roy E Gulliford (Authorized Signature) — Executive Director (Title) — (Date)

(Prepare in triplicate - return all copies to this office)

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 70-240

Tract 1500—Synod

[Filed Nov. 5, 1975]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, ET AL., DEFENDANTS

JUDGMENT ON VERDICT

AND NOW, to wit, this 5th day of November, 1975, pursuant to the verdict of the jury returned on the 3rd day of October, 1975, and the jury having answered "no" to the Special Interrogatories filed on September 30, 1975, asking if the doctrine of substitute facilities applies, and it appearing to the Court:

1. The public use, more particularly described in the Complaint filed in the above-mentioned action, for which Tract No. 1500 was taken and condemned by the United States of America is one authorized by law and the said tract of land and the taking thereof is necessary for said public use.
2. This case is within the jurisdiction of the United States District Court for the Middle District of Pennsylvania, which has the power and authority to enter judgment.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that judgment be entered in favor of:

SOUTHEASTERN PENNSYLVANIA SYNOD
OF LUTHERAN CAMPS OF AMERICA

and against the United States of America in the sum of $250,000.00. The sum of $186,000.00 having been de-

posited into the Registry of the Court upon the filing herein of the Declaration of Taking there remains to be deposited into the Registry of the Court the sum of $64,000.00, together with interest thereon at the rate of six (6%) percent per annum from June 15, 1970, until date of deposit.

All liens, claims, encumbrances, interests and demands of every nature whatsoever existing at the time of taking are hereby transferred from the land to the fund and any and all awards of just compensation that may be made in this proceeding shall be payable and deductible from the said fund.

It is further ORDERED AND DECREED that the said sums, or any part thereof, shall be disbursed to the defendants upon the entry of this judgment, the deposit in the Registry of this Court of any deficiency, and the presentation of a praecipe either from the persons to whom payment is made, or their counsel, authorizing the Clerk to satisfy this judgment in full.

Jurisdiction is reserved to make and enter such further orders and decrees as may be necessary and proper.

/s/ Michael H. Sheridan
United States District Judge

Certified from the record
Date Nov. 5, 1975
Donald R. Berry
Clerk

For /s/ Richard M. Popovitch
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 70-240

Tract 2122—Synod

[Filed Nov. 5, 1975]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, ET AL., DEFENDANTS

JUDGMENT ON VERDICT

AND NOW, to wit, this 5th day of November, 1975, pursuant to the verdict of the jury returned on the 3rd day of October, 1975, and the jury having answered "no" to the Special Interrogatories filed on September 30, 1975, asking if the doctrine of substitute facilities applies, and it appearing to the Court:

1. The public use, more particularly described in the Complaint filed in the above-mentioned action, for which Tract No. 2122 was taken and condemned by the United States of America is one authorized by law and the said tract of land and the taking thereof is necessary for said public use.
2. This case is within the jurisdiction of the United States District Court for the Middle District of Pennsylvania, which has the power and authority to enter judgment.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that judgment be entered in favor of:

SOUTHEASTERN PENNSYLVANIA SYNOD
OF LUTHERAN CAMPS OF AMERICA

and against the United States of America in the sum of $300,000.00. The sum of $210,000.00 having been de-

posited into the Registry of the Court upon the filing herein of the Declaration of Taking there remains to be deposited into the Registry of the Court the sum of $90,000.00, together with interest thereon at the rate of six (6%) percent per annum from June 15, 1970, until date of deposit.

All liens, claims, encumbrances, interests and demands of every nature whatsoever existing at the time of taking are hereby transferred from the land to the fund and any and all awards of just compensation that may be made in this proceeding shall be payable and deductible from the said fund.

It is further ORDERED AND DECREED that the said sums, or any part thereof, shall be disbursed to the defendants upon the entry of this judgment, the deposit in the Registry of this Court of any deficiency, and the presentation of a praecipe either from the persons to whom payment is made, or their counsel, authorizing the Clerk to satisfy this judgment in full.

Jurisdiction is reserved to make and enter such further orders and decrees as may be necessary and proper.

/s/ Michael H. Sheridan
United States District Judge

Certified from the record
Date Nov. 5, 1975
Donald R. Berry
Clerk

For /s/ Richard M. Popovitch
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 70-240

Tract 2132—Synod

[Filed Nov. 5, 1975]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

564.54 ACRES OF LAND, MORE OR LESS, SITUATE IN MONROE AND PIKE COUNTIES, ET AL., DEFENDANTS

JUDGMENT ON VERDICT

AND NOW, to wit, this 5th day of November, 1975, pursuant to the verdict of the jury returned on the 3rd day of October, 1975, and the jury having answered "no" to the Special Interrogatories filed on September 30, 1975, asking if the doctrine of substitute facilities applies, and it appearing to the Court:

1. The public use, more particularly described in the Complaint filed in the above-mentioned action, for which Tract No. 2132 was taken and condemned by the United States of America is one authorized by law and the said tract of land and the taking thereof is necessary for said public use.

2. This case is within the jurisdiction of the United States District Court for the Middle District of Pennsylvania, which has the power and authority to enter judgment.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that judgment be entered in favor of:

SOUTHEASTERN PENNSYLVANIA SYNOD
OF LUTHERAN CAMPS OF AMERICA

and against the United States of America in the sum of $190,000.00. The sum of $144,000.00 having been

deposited into the Registry of the Court upon the filing herein of the Declaration of Taking there remains to be deposited into the Registry of the Court of the sum of $46,000.00, together with interest thereon at the rate of six (6%) percent per annum from June 15, 1970, until date of deposit.

All liens, claims, encumbrances, interests and demands of every nature whatsoever existing at the time of taking are hereby transferred from the land to the fund and any and all awards of just compensation that may be made in this proceeding shall be payable and deductible from the said fund.

It is further ORDERED AND DECREED that the said sums, or any part thereof, shall be disbursed to the defendants upon the entry of this judgment, the deposit in the Registry of this Court of any deficiency, and the presentation of a praecipe either from the persons to whom payment is made, or their counsel, authorizing the Clerk to satisfy this judgment in full.

Jurisdiction is reserved to make and enter such further orders and decrees as may be necessary and proper.

/s/ Michael H. Sheridan
United States District Court

Certified from the record
Date Nov. 5, 1975
Donald R. Berry
Clerk

For /s/ Richard M. Popovitch
Deputy Clerk

PORTIONS OF TRIAL TRANSCRIPT

* * * *

[23] two other matters at this time in Court. It won't take very long. So if you don't mind returning to the juryroom, we will send for you when we are finished.

(Whereupon, a recess was taken.)

(Whereupon, five Bear Creek Deeds were produced and marked for identification as Synod's Exhibit Nos. 7, 7-A, 7-B, 7-C, 7-D, and 7-E, respectively.)

(Whereupon, a copy of minutes taken in 1962 was produced and marked for identification as Synod's Exhibit No. 8.)

WILLIAM A. JANSON, JR., called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DITTMANN:

Q Dr. Janson, where do you reside?
A North Wales, Pennsylvania, right outside of Philadelphia.
Q And what is your profession?
A I am a clergyman.
Q And how long have you been a clergyman?
A Thirty years.
Q Where, would you give us a little of your educational background, past service?
A Yes, sir.
[24] I am a native of York, Pennsylvania, and went through the public school system there and went to Susquehanna University in Selingsgrove, Pennsylvania; and to seminary in Gettysburg, Pennsylvania.

And then, I served rural parishes in Virginia for a while and I was an assistant pastor for a while in New York City.

Then, I did some graduate work sandwiched in there and got a degree from Columbia University in Education, taught for a time in Ohio and then served two

parishes in Ohio and in 1961, I came to Philadelphia as an Editor for our Board of Parish Education; spent five years doing that and then took a parish in Lansdale, Pennsylvania, and from there, I became the president of the Synod.

Q Would you tell us what the function of the Synod is?

A Yes.

In our tradition, we try to group congregations together in a geographical area. We call that grouping of congregations a synod.

Now, Southeastern Pennsylvania, there are 182 Luthern congregations in the five-county area; Bucks County and Chester, Delaware, Montgomery and Philadelphia County. And that is the Southeastern Pennsylvania Synod, and my function in that is to seek to provide an opportunity for [25] these congregations to make impact in providing programs and institutions, opportunities for us to act collectively, where an individual congregation would have difficulty in acting.

Q How long have you held the office of president?

A I have been president since 1968.

Q Would you briefly describe the Northeastern Synod, in terms of its area?

A Yes, I believe the Northeastern Pennsylvania Synod encompasses twelve counties; mainly from Allentown, Easton, Bethlehem, Reading, on the south, to the extreme north, Pennsylvania border and as far east as the Delaware and I am not sure where the western boundary of that Synod is, but it encompasses about twelve counties.

Q What is the function of the Lutheran Church Camp Corporation?

A Well, about fifty-some years ago, some of the leaders in the Lutheran church felt that camping would provide a unique opportunity for young people. They decided that this would give them a chance to do a variety of things.

First of all, I think that it would help them, a young person grow in his love of God and Country as he would spend some time in the out-of-doors. He would have a

good opportunity of learning about nature and would have a good opportunity to appreciate the land in which he lives, like going to bed when the crickets are chirpping and studying the [26] trees and the flowers and that kind of thing. So the Camp Corporation, in our tradition, has been one that has carried a very important part of the program for growing boys and girls.

I think that the Camp Corporation also is very important because we have an opportunity for our young people to mix, from various sections of these two Synods. Boys and girls from the city relate to boys and girls from the country. Small-town children relate to others whom they meet and sometimes they form very lasting friendships. And they learn something about the way they relate to other boys and girls.

The Camp Corporation also is quite concerned about the fact that children from the ghetto area and boys and girls from the rural areas have a chance to mix and become known.

We also like to feel that we are working with children who have learning disabilities and some who have difficulty in their homelife. So this is a kind of mix that the Camp Corporation attempts to administer so in that sense, it plans its programs and conducts its activities; so, it is really then a system of providing an educational, religious, charitable experience for boys and girls of Northeastern Pennsylvania.

Q What are the names of the camps that were owned by [27] the Synod prior to the date of taking?

A Camp Miller, Camp Hagan and Camp Ministerium.

Q And where were those camps located?

A Along the Delaware, Shawnee on the Delaware area.

Q Has the Northeastern Synod participated in the funding of the camp program.

A Yes, sir, both synods have.

I think the jury might appreciate the fact that prior to 1968, the Northeastern Pennsylvania Synod and the Southeastern Pennsylvania Synod were one, called the Eastern Pennsylvania Synod, and so prior to 1968, ob-

viously, the Eastern Pennsylvania Synod supported the camping program.

When we divided ourselves into two synods, then this became a function of both synods. So since 1968, both synods have supported the camping program. We do this collectively because it is economically feasible. It makes sense to do it together.

Q What have been the financial results of the operation of the camping program, by the church?

A Well, yes, we have always had to subsidize it. It has never been a profit-making enterprise since I became president in 1968. The amount of money that both have put into the camps has risen from $13,000 to approximately $30,000 this past camp season.

Q Would you identify the Lutheran camps, the Camp

* * *

* * * *

[31] MR. DITTMANN: Well, I assume it will be possible to have them brought down here although, well, work out something else, access to them.

(Whereupon, the discussion at side bar was concluded.)

BY MR. DITTMANN:

Q I show you an exhibit marked Synod's Exhibit No. 8 and ask you what that is, Doctor.

A This is a copy of the minutes that were taken, in 1962, authorizing the appointment of a committee to study the selection of campsites.

Q Is that a true and correct excerpt from the minutes of that meeting?

A Yes, sir.

Q Would you please read to the jury the excerpt?

A Yes.

"The president explained that because the dam will be built at Tocks Island in the Delaware River above Shawnee, the three summer camps will be flooded and new sites will have to be obtained. Upon his recommendation, it was resolved:

A. That the president be authorized in consultation with the Board of Christian Education to appoint a committee on the selection of camp sites.

B. That the committee be composed of three representatives of the Board of Christian Education and two [32] representatives of the Executive Board.

C. That the committee be authorized to consult with the Financial Committee of this Board in the preparation of a plan to finance the purchase of the campsites.

D. That the committee subject to concurring action by the Financial Committee and the approval of the Synod's legal counsellor be authorized to take the necessary steps to protect its interest in any specified property, pending formal action by this Board and;

E. That the Board of Christian Education be authorized to spend up to $10,000 of its funds in developing surveys and plot plans to guide the committee in its choice of sites."

Q Now, Dr. Janson, do you know whether or not a campsite was subsequently selected and acquired by the Synod?

A Yes, I do.

Q And do you know when that occurred?

A Somewhere in the year 1963, 1964.

Q And do you know the location of the campsite?

A We refer to it as Bear Creek Camp Site.

Q And where is Bear Creek?

A Well, it is off around 115, just one exit beyond the Scranton interchange, off the Northeast Extension.

Q Do you know how many acres comprise the Bear Creek site?

[33] A Well, when we bought it, we thought we were acquiring 3500 acres and then it was necessary to survey the area that we bought and we picked up 300 acres. So we now have 3800 instead of 3500.

Q Do you know the total cost of the Bear Creek site?

A Yes, I think it was approximately $321,000.

THE COURT: Synod's Exhibit No. 7 to 7-E, are admitted in evidence.

BY MR. DITTMANN:

Q And those, Dr. Janson, are copies of the deeds conveying the Bear Creek site to the Synod, are they not, sir?

A Yes.

Q And by that, I am referring to Exhibits No. 7 to 7-E.

A Right.

Q Now, Dr. Janson, do you know the date when the three Delaware River camps of the Synod were condemned by the United States?

A I believe that was 1970, that the formal condemnation took place.

Q Would you tell us why the Synod has not proceeded to construct new, to develop a complete new campsite, at the Bear Creek location?

A Yes, I think this long time has become a reality probably for two factors.

I think, first of all, we were hoping that the * * *

* * * *

[39] hereafter referred to as the Church. The corporation shall be in adherence to such Church or its lawful successor and amenable to its laws."

Q Now, in that connection, would it be fair to say that in promulgating the camping situation, the Camp Committees would be trying to adhere to that purpose, under that corporation?

A Yes.

Q May I have them back; they are basically the same. That is the later amendment, is it not?

THE COURT: What is the number, Doctor?

A 33-A is on the yellow tag.

This is entitled, "Articles of Amendment of the Eastern Pennsylvania Synod of the Lutheran Church in America."

Q Now, that is changing the name again, is it not; in 1969, I believe?

A Yes.

Q The date on that is 1969, is it, sir?

A The date of that is 1969.

Q And underneath that paragraph, changing the name, there is another paragraph again setting forth the purposes of the organization.

A Yes.

Q And would you read that paragraph?

A Yes, it is starting with the four again.

[40] "The purpose of the corporation is to promote the Christian religion according to the tenets of faith as set forth in the laws of the Lutheran Church of America, hereinafter referred to as the Church. The corporation shall be in adherence to such Church or its lawful successors and amenable to its laws." Number five, "Corporation shall not contemplate pecuniary gain or profit incidental or otherwise to its members." And six, "The corporation shall have perpetual existence." Seven, "The corporation is organized on a non-stock basis."

Q Now, to your knowledge, there has been no other changes in the name?

A That is correct.

Q And that would still be in effect today?

A Yes.

Q And would have been in effect in June, 1970?

A Yes.

Q Just while we are on that for a second, that paragraph dealing with, it does not contemplate pecuniary gain or profit, that is to qualify it under a religious corporation, is it not?

A That is my understanding.

Q In other words, if you made profit, you would have to start paying taxes?

A I am afraid that is the case, yes.

[41] Q Okay, may I have it back.

Would it be fair to say, in your opinion, that in conducting the camps, say for the period from 1962 up to 1970, that the camps did act in a way to promote the tenets and the teachings of the Lutheran Church of America?

A I believe so.

Q In other words, do you know for a fact that the children, up until 1970, anyway, the majority of the children that attended the camps were of the Lutheran faith?

A I believe I would like to ask the Executive Secretary to document that. I don't believe the term majority is quite accurate. There is always a shifting from year to year. Sometimes it is fifty/fifty. Sometimes it could be 55/45. The term, majority, throws me a little bit.

Q Well, there was an affidavit submitted in this proceeding by the Reverend Gulliford, that you mentioned, which is on file with the Court and I believe he states that under paragraph seven on page five, that in 1965, the percentage of Lutheran children attending the camps was 59 percent and non-Lutherans were 41 percent.

Then, in 1966, it was 60 percent for the Lutheran, of Lutheran children, children of the Lutheran faith and 49 percent for non-Lutheran children.

A Right.

Q That in 1967—

* * * *

[53] REDIRECT EXAMINATION

BY MR. DITTMANN:

Q Dr. Janson, do you, is the camp operation by the Synod as previously described by you, consistent with the purpose of the Synod as stated in the charter documents that were shown to you earlier?

A It would be my conviction, yes.

Q And would you explain why you think the two are consistent?

A Yes, well, I think the reason they are consistent is because of the philosophy of camping that has evolved and emerged. It is a very personal style of camping which there is a very close relationship between the counsellors and the campers. There is an effort to, you know, communicate about the world and about creation, about the presence of God. There is an effort to talk

about Christian values and as they relate to life. So, you know, with that kind of programming, I would say it is consistent when it talks about the articles of incorporation, about the tenets of the Lutheran confession.

Q Dr. Janson, do you have any idea of the amount of money that has been invested in the Bear Creek site, to date, in improvements?

MR. RUVOLO: Objection, Your Honor.

THE COURT: No, I think in view of the cross examination, that is relevant; overruled.

* * * *

[57] A I was at the United Church of Christ Conference Center, but no full-blown denominational church camp.

Q How about non-denominational camps or private camps, sir?

A No.

Q You have had no occasion to visit them?

A No.

MR. RUVOLO: No further questions.

THE COURT: Next witness.

ROY GULLIFORD, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DITTMANN:

Q Where do you live, Pastor Gulliford?

A I live in Berks County, suburban Reading, Pennsylvania.

Q And how long have you resided in that area?

A Since 1964.

Q And what is your educational background?

A I am a product of the schools of the City of Philadelphia, attended Gettysburg College in Gettysburg, Pennsylvania. Then, went on to the Lutheran Theological Seminary at Philadelphia where I received my Bachelor of Divinity and was ordained as a minister of the Lutheran Church of America.

Q And when was that?
[58] A 1959.
Q And what has your career been since 1959?
A I served briefly as an assistant pastor in Philadelphia. In 1960, assumed for the first time my own parish in Chester County, a town called Lionville. I was there for four years, took six months off to get an additional decree and then served as pastor of Reformation Lutheran Church, Refton, suburban Reading, until 1970, when I was called by the Synod to serve as Executive Director of the Lutheran Camp Corporation.
Q And you are today the Executive Director of the Camp Corporation?
A Yes, I am.
Q What are your duties and responsibilities as Executive Director of the Camp Corporation?
A I am responsible for the working in conjunction with the Board in selection of the personnel, directors, staff, responsible for the oversight of the programs, the care of the facilities and of course, to the best of a clergyman's ability, the fiscal concerns of the corporation.
Q Would you tell us again to whom you report?
A I am responsible to the Camp Corporation Board.
Q And that Board is made up of what?
A Laymen and pastors, chosen by the Synod to oversee the camping operations. I am their employee.
[59] Q And when did you assume that office?
A March 1, 1970.
Q Do you know the date when the United States condemned the three camps that we have referred to before?
A We were informed of the condemnation in August of 1970. At that time I was told that was backdated to June 1 of 1970.
THE COURT: Maybe we can get that in by stipulation; can't we? What is the agreed date?
MR. DITTMANN: Of taking, Your Honor, June 15. June 15 was the date it was taken.

BY MR. DITTMANN:

Q What other, since you were named as Executive Director, have you had any other camping experiences and activities?
A Yes, I was part of a, what was called the Eastern Pennsylvania Task Force. This was an ecumenical study of fifteen camp sites owned by Protestant churches in Eastern Pennsylvania. It was an attempt to study their sites, their programs, their philosophies, to see where things could be done jointly and to develop an overall plan for the '70's, in which we could more cooperatively work and thus have more impact and accomplish more. I was on that steering committee.
I was also invited by a sister Lutheran body, the American Lutheran Church, to be one of three who studied the [60] same sort of thing for the Pittsburgh camps of the ALC, Camp Agape. I am presently serving on the Convention Committee of the American Camping Association, Chairman of the In Depth Seminar Committee for the National Convention which will be held in Philadelphia this March. I am responsible for determining what the content of the seminars will be and in conjunction with the committee, chosing the people who will lead those seminars.
Q As Executive Director, were you familiar with the operation of Camp Miller, Hagan and Ministerium in 1970?
A I was serving as Executive Director at that time and Director of Camp Ministerium.
MR. RUVOLO: Excuse me, I didn't hear the last part.
A Also, Director of Camp Ministerium, the middle camp.

BY MR. DITTMANN:

Q I would like you to describe in detail to the jury, first of all; tell us about Camp Miller, where was it located?
A Camp Miller was about three miles north of the Shawnee on the Delaware. It was, I believe, 140 acres,

55 buildings, handled, could handle up to 260 campers with a staff of 68. Half of the site was river bottomed right along the river. The balance of it was going on up the mountain. Could I show that?

[61] Q Yes.

I show you a large photograph which I am going to have marked for identification in just a minute and ask you whether this shows Camp Miller?

A Upside down, but it is Camp Miller.

Q Now, what do you mean by upside down?

A They reversed the photograph. It is Camp Miller, but it is, I guess when they put it on the poster board, they twisted it somehow. Somehow, it gets everything backwards.

(Whereupon, a photograph of Camp Miller was produced and marked for identification as Synod's Exhibit No. 1.)

BY MR. DITTMANN:

Q This has been marked Synod No. 1. Now, Synod No. 1, that is a picture of Camp Miller, you say it is upside down?

A Yes.

Q And this is an inversion, I guess, that has been created by the photographer?

A In making the poster, yes.

Q How does that affect the picture?

A Well, the river is still on the east and the mountains are still on the west, but the north end of the camp is on the south and the south end of the camp is on the north. I don't know whether you want to pursue that or not.

Q In other words, if you were approaching the camp [62] from the river, you would by airplane as this picture does, you will actually see the buildings up here to the right side and the open area would be to the left side?

A Yes.

Q Do we have a smaller picture that has been done correctly?

A A little eight by ten is in the library.

Q In a minute, we will get that.

Now, supposing I hand you Synod No. 1 and then I am going to ask you a little bit more. About how many buildings did you say comprised it?

A Fifty-five buildings on the Miller site.

Q What kind of buildings were they?

A They were a variety of buildings, of course, that you would need for a camp. Originally, Miller was a farm and we had the farm house and barn and we were able to keep some of the area in farming so that some of the campers could see what farming is all about. Many of our campers are from Philadelphia and one boy asked how you could tell a bull from a cow. He didn't know which were male and female, so it was helpful to see a bit of a farm that campers could see things firsthand. There were tennis courts, of course, large playing fields, atheltics were always a large part of the program.

A large dining hall facility, that could comfortably accommodate 300. There was an infirmary, an arts and crafts [63] building, fully equipped.

These actually are on the south. They were some of the original cabins built back in the 1920's. All of these cabins were built in 1965. They were all replacement cabins. This whole string, I believe of fifteen cabins, so that when we say that the camp was established in 1927, the buildings, of course, continues as you grow and expand, you develop your facilities. A major portion of the program was here on the mountain where we could have all kinds of nature—

Q And by the mountain, you are referring to that wooded area shown on the left?

A Yes, the mountain goes at about a 45 degree angle on the far said of the township road so that this was used quite extensively for camping. It was a convenient place for the youngest campers to be away just for one overnight.

This, of course, is the river.

Q Would you tell us again the number of campers that were accommodated?

A Camp Miller could accommodate 260 campers plus 68 staff.

Q And prior to 1970, what kind of children were served by Camp Miller? What was the sex of the children?

A Oh, I am sorry. They were all boys. Miller was an all boys' camp and had been since is inception in 1921. We had boys coming back third generation. They would come back [64] and their fathers could show them on the rafters where they had put their initials when they were campers in some of the older cabins. So it was always a boys' camp and exclusively a boys' camp.

The water front program was extensive. With the river, as we have it, we had very gentle parts of the river where the youngest campers could learn to canoe and as they became more adept at canoeing and had completed their instruction in canoeing and swimming, we would expand their trips, taking them all the way up to Narrowsburg, New York and bringing them through White Water, being able to come right back down to our site.

Q How far is Narrowsburg?

A Golly, I'm not sure.

Q It is in New York State?

A Again, it is on the Delaware, so it separates Pennsylvania and New York, but it is up above Port Jervis, so it is, I would guess it is maybe 10 or 15 miles above Port Jervis. So it would be 40 to 50 miles from the site.

Q How far is Port Jervis by road from the camp?

A It is about an hour's ride, I don't know the mileage.

Q Going upstream from Camp Miller to the, what was the next camp?

A The next camp was Camp Ministerium.

Q How far was that from Camp Miller?

[65] A They were separated by a farm and a couple of houses, probably about two miles.

Q And what was the method, what was the connection, method of travel between Camp Miller and Camp Ministerium?

A The road, of course, paralleled and connected the camps on the western side and the river was our connection on the eastern side.

Q And you say the road ran along next to the wooded area?

A Yes, the road, you can just see a bit of the road here at the edge of the farm. It comes along here. It is in the valley itself coming out of Shawnee and then continues on up and Ministerium would be just out of this picture.

Q Tell us a bit about Camp Ministerium. What is the acreage and terrain at Camp Ministerium?

(Whereupon, a photograph of Camp Ministerium was produced and marked for identification as Synod's Exhibit No. 1-A.)

BY MR. DITTMANN:

Q And I will hand you a second air photograph which has previously been marked for identification as Synod No. 1-A and I ask you if you can first of all tell us what that photograph represents?

A This photograph represents, again, an aerial view, looking down over the camp, looking over the Delaware towards [66] Port Jervis, shows you the area the government would like to make a lake. The Camp Ministerium facility was originally a farm.

Q By the way, let me interrupt you.

A Yes.

Q Do you know when the photograph previously marked as Synod No. 1 was taken?

A No, I do not. These were photographs taken for the purposes of producing a postcard that kids could send right home from camp and these were, I am guessing from what I can see—

Q Don't guess.

A They had to be in the late '50's or early '60's.

Q Was it made before 1970?

A Oh, yes. I would guess the late '50's, early '60's.

Q And would that same answer be true of a photograph of Camp Ministerium that you now have before you?

A Yes, yes. Ministerium was originally a farm and many of its buildings historical.

Q First of all, tell us the size, the number of acres involved in Camp Ministerium.

A I believe there are 182, something over 180 acres at Camp Ministerium. There were 37 buildings. Ministerium could, at the time it was developed, handle comfortably 120 campers and a staff of 32. It was purchased by the Synod in [67] 1947 and developed in the years after that time.

Q Now, tell us the kind of program that was conducted at Camp Ministerium.

A Ministerium originally was what we called leadership training. This is where young people and originally, adults, were brought to camp for a week, choirs were brought to camp for a week, for a variety of schools that was an attempt to develop the leadership within the congregations.

In the mid '60's Ministerium started and was the vanguard of a new kind of program called small group camping. Small group camping is an attempt to bring together youngsters from very different backgrounds of different races, of different creeds, city kids, urban kids and bring them together and have them, their task for the week is to learn to accept each other, to meet each other as people. We feel that the gospel is a gospel of love and that this gospel applies whether you are Christian or not. There is a need to meet and accept people and to love people for what they are and so the task at this site is for youngtsers to do exactly this. We use the boating and canoeing at this site. We used the backpacking to teach them and to have living experiences of what they talk about in church school.

In a sense, Ministerium was a laboratory for church school. It is like studying a frog and never cutting one up, if you don't have a lab to go with what happens in

the class- [68] room. So, in a sense the camp is the lab for what happens in church school and this is the program that has been developed at Ministerium. It has now spread really across the nation and in this last year, I have been in contact with people in California and New Jersey, who want to know more about the development of this program because they are very interested in what is happening here.

Q What is the status of Camp Ministerium today?

A Well, the Ministerium facility in 1973—

MR. RUVOLO: Objection, Your Honor, date of taking would be 1970. I think it is irrelevant.

THE COURT: Yes, I think so.

BY MR. DITTMANN:

Q How long did you continue to operate Camp Ministerium?

A The last season of operation was the summer of 1973, at this site.

Q And where has Camp Ministerium been operated since 1973?

MR. RUVOLO: Objection, Your Honor.

THE COURT: I will permit it now. I can see the relevancy now.

A Camp Ministerium, for the last two summers has been located at the new Bear Creek site in a retreat facility and it is the temporary headquarters. We have supplemented the retreat facility with tenting facilities so that we can continue [69] to run this program.

BY MR. DITTMANN:

Q Continuing upstream from Camp Ministerium and by the way, is that picture of Camp Ministerium that you have just referred to, is that inverted by the photographer?

A No, that one is right.

Q That is a true representation?

A That is a true representation.

(Whereupon, a photograph of Camp Hagan was produced and marked for identification as Synod's Exhibit No. 1-B.)

BY MR. DITTMANN:

Q Now, I show you Synod's No. 1-B and ask you what 1-B represents?

A This is Camp Hagan. Again, east and west are east and west, but north and south are not north and south. Again, the transparency, I think has been flipped over. But the road comes in, the road that came past Miller and Hagan, then branched, one branch of the road went out to Bushkill and the other branch of the road continued here as a township road. I believe, the first part was a state, now this becomes township road. Continuing on past and a back road to Bushkill, again giving us access directly to our site. This is the road into the site.

Q Tell us how big the Camp Hagan site is.

[70] A I believe, forty acres and 34 buildings.

Q What were the improvements that were, that were existed thereon, when the property was condemned?

A All right, this site was purchased in 1937. Through '37, '38, the beginnings of the cabins were established. Building continued as funds were available and as it was necessary, again, up into the 1950's when this large building—

Q Now, you are pointing to a building in the center of the exhibit?

A Yes, this is something called the Corn Crib. It had a full stage for theatrical production. It was a concrete floor, a place where the kids, campers could go in inclement weather and also to stage productions. One of the last ones they did was "How to Succeed in Business."

This was one of the last buildings. Also built was this arts and crafts building.

Q That building is located where in terms of the photograph?

A On the back of the river. It is the white roofed building right here (indicating). And the arts and crafts building had a large stone fireplace, has a, still there, large stone fireplace and of course, kilns for ceramics

and all the supplies necessary for a complete arts and crafts program.

Q What was the capacity of Camp Hagan?

[71] A Camp Hagan can take up to 240 with a staff again of 68. Camp Hagan was a girls' camp. It was the sister to Camp Miller, the boys' camp.

Q How long, what is the operational status of Camp Hagan as of 1975?

A Camp Hagan was in operation in 1975, but now, temporarily, called Miller-Hagan because of the loss of the Miller site. We combined the two programs on the one site. It is the holding action until all these things are resolved so that we can get going again.

Q What happens, what is the operational status of Camp Miller?

A At the time of condemnation in 1970, we had expected to continue to run all three of the camps. We had felt that there would be some arrangement that could be made because though the government had been saying for ten years they were going to build a dam, there still wasn't anything happening and we had hoped that we would be able to continue until we could get just compensation and move out of the valley.

Unfortunately, there is tremendous vandalization of this site. It was awful. We had hoped, it became clear by mid-winter that we could not run a program here. Everything you can imagine was smashed or stolen. We had hoped at least to have one last father-son weekend so that fathers and sons could come back and what have you. It was impossible. The [72] site was too vandalized, too badly damaged and so we just had to walk away from it and merge the two camps on the Hagan site and hold the corps of our staff and hopefully the corps of our campers until we could move onto Bear Creek.

Q Did you give the distance from Camp Ministerium to Camp Hagan?

A A mile and a half, two miles.

Q What was your function as Executive Director in relation to these three camps that you have just described?

A May I sit down?
Q Yes.
A I was responsible for the on-site control. In other words, I represented the Board, the Camp Corporation on site. The programs, the staff, I was responsible for hiring the directors of the sites and just general oversight on a day-to-day basis for the season of the summer camping program.
Q How were these camps operated in relation to each other?
A Programatically, they were independent. They ran their own separate programs, but originally, we were one operation. We did common purchasing, as Executive Director; I live at the center camp and oversaw, you know, just a mile or so in either direction, could see what was happening on the other sites, could participate in programs at the other sites. Our vehicles, our full-time people, all of us were [73] responsible for all three sites and with that short distance between, it was a very simple thing, it was really almost like one campus.
MR. DITTMANN: If Your Honor please, would you indulge us for just a minute now?
THE COURT: You would like to recess now? We will have a recess. Before we recess, Members of the Jury, I have your mileages here. Would it be inconvenient for any of you to stay until five o'clock? Do any of you have any transportation problem? If you do, tell me. I would be glad to cooperate. One final thing, what about some mornings we would like to start at 9:30? Would that make it inconvenient? We will recess. We usually have one recess in the afternoon.

(Whereupon, a recess was taken.)

(Whereupon, Roy Gulliford resumed the witness stand.)

(Whereupon, a photograph of Camp Hagan was produced and marked for identification as Synod's Exhibit No. 1-C.)

BY MR. DITTMANN:

Q Pastor Gulliford, I show you a photograph which has been marked Synod's Exhibit No. 1-C and ask you whether you can identify that photograph and what its relationship is to another photograph that has previously been marked?

* * * *

[87] 25 canoes, a few row boats that are used really for lifeguarding and something called playaks; there are thirteen playaks at Miller/Hagan and I think six, no, there are nine at Ministerium. A playak is a plastic, like a kayak, eight feet long and they were gotten for the youngest campers. So often older campers, young campers only sit in the middle of a canoe and they don't get a chance to do things for themselves, so they were gotten so that these youngest campers could paddle around in a safe area and do things for themselves instead of having them done for them. That was basically our purpose.
Q Directing your attention to the program that was conducted at the camps, would you give us a typical day, day's schedule at Camp Miller?
A Okay, I could really combine Miller and Hagan because they were much the same, always have been.
The day would begin at quarter of eight and by eight o'clock the youngsters would be standing at the flag pole for the flag raising. Then, go into breakfast. Following breakfast, it was clean up the cabin time. They called it cabin capers and then at nine o'clock they would have their first class which might be arts and crafts, it might be water front, it might be boating, you know. It could be anyone of a number of departments including nature and religion.
MR. RUVOLO: I didn't hear what he said.
[88] THE COURT: Including nature and religion.
A Including nature and religion. There are five departments.
There would be a break and in the second class, they would have three structured classes each day. Everybody would be at the water front at least once. They would be in canoes or canoeing program, at least four

to five hours a week. This might be lumped together because you need more time to teach that sort of thing.

In addition to the regular classes, there were clubs. The youngsters could chose a variety of things from, there was a water front club and they did scuba diving in the river and flipped over rocks to see what crayfish they could find and what have you. A fishing club, the youngsters would be shown and taught in the nature department the kind of fish that are in the river, the best way to catch them and then they would go out in the canoes and try to catch them. If they had any luck, they were brought back and the cook fried them for them.

So that there would be clubs and these clubs would include poetry or gymnastics or water front or fishing. So the day was partly structured and partly built on the basis of each youngster's particular interests.

The day would conclude with dinner and then an evening activity and cabin devotions and then, hopefully, to [89] bed, if we were lucky to get them into bed. That would be a basic day at Miller/Hagan.

(Whereupon, a photograph of playing field was produced and marked for identification as Synod's Exhibit No. 5.)

(Whereupon, a photograph of soccer game was produced and marked for identification as Synod's Exhibit No. 5-A.)

(Whereupon, a photograph of girls' senior area was produced and marked for identification as Synod's Exhibit No. 5-B.)

(Whereupon, a photograph of Great Hall was produced and marked for identification as Synod's Exhibit No. 5-C.)

(Whereupon, a photograph of boys returning from fishing was produced and marked for identification as Synod's Exhibit No. 5-D.)

(Whereupon, a photograph of soccer game was produced and marked for identification as Synod's Exhibit No. 5-E.)

BY MR. DITTMANN:

Q Now, Pastor, I will show you a final group of photos, number Synod's No. 5 to Synod's No. 5-E, which relate to program and activities and ask you to briefly tell the jury what each of these photograps shows and then we will [90] circulate those pictures.

A This is one of the playing fields.

Q What number is that, please?

A I have forgotten, No. 5. We are looking with our backs to the river, looking toward the mountain across a playing field. This happens to be a baseball field. The arts and crafts building is here. Some youngsters are going to a fishing class. They have got their poles. We happen to have another shot of them coming back and Mr. Ruvolo noted that they didn't have anything. Maybe they didn't catch anything, I don't know.

Q By the way, the pictures, of course, were taken in 1975?

A Yes, the same day.

Q Do they represent the same things that were true in 1970?

A No change in the conditions in that picture at all.

Q How about . . .

A In succeeding pictures, I am looking.

Q How about co-educational features?

A Oh yes, it is now boys and girls.

Q But essentially, the program and activities remained the same?

A Yes, remained the same.

Q Okay, would you please continue.

[91] A This is 5-A and this shows a soccer game going on in the background. You can see a tower that the senior boys erected as part of their lashing project. It was thirty-some feet high and they were pretty proud of lashing the whole thing with no nails. They went on to build an eighty-five foot rope bridge after that.

This shows the girls again.

Q What number, please?

A 5-B, this shows the girls' senior area. The senior campers don't have quite the structured program that the younger campers have. They set their own pace a lot

more, spend a lot more time backpacking and canoeing and being on and off the site.

This is simply, this is not a structured activity.

Q What number is that, please?

A 5-C.

Q What does that show?

A This shows a portion of Great Hall and a misuse of the water fountain which was happening all the time. Some of the youngsters on free time, just horsing around. This again, shows the same.

Q That number is what?

A 5-D. Again, the same shot, the same boys happen to be coming the other way with their fishing poles, not having gotten anything.

[92] And 5-E is another soccer game going on.

Q All right.

MR. DITTMANN: With the Court's permission, I would like to circulate this.

THE COURT: Yes.

(Whereupon, Synod's Exhibits No. 5 through 5-E were circulated among the jury.)

BY MR. DITTMANN:

Q Pastor, do you know whether or not any ratings or evaluations have been made of the camping program of any of the Synod's camps?

A Camps Miller and Hagan were members of the American Camping Association and as members must be evaluated and on-site evaluation in regular basis. The last of those was done in, I think, 1971, 1972, around in that area. We received a rating out of a possible 100, we received a rating of 85.

Q What is the American Camping Association?

A The American Camping Association is, to my knowledge, the only nation-wide organization devoted to watching over and increasing the professionalism of camps, not just church camps, but independent camps, agency camps, any kind of camp and to my knowledge, involving young people and providing standards so that parents can know what sort of camp they are sending their youngsters to.

Q Now, Pastor Gulliford, what qualifications, if any, [93] are necessary to be eligible to attend any of the river camps?

A Simply, age. Youngsters at Miller/Hagan are eligible between the ages of 8 and 16, and at Ministerium, 9 to 17.

Q And how are applications received for the camps?

A On a first-come, first-serve basis.

Q Are there any restrictions as far as race, color or creed?

A No, no.

Q Is there any policy of giving preference to any particular religious affiliation?

A No.

Q Do you have any data with respect to the religious distribution of campers?

A I believe my office, I supervise my office, putting that sort of information together, yes.

(Whereupon, a breakdown of Lutherans and non-Lutherans was produced and marked for identification as Synod's Exhibit No. 9.)

BY MR. DITTMANN:

Q Pastor, I show you an exhibit previously marked Synod's Exhibit No. 9 and ask you what that represents; take the stand, please.

A This represents the breakdown of Lutherans and non-Lutherans at the camps. At Camp Miller and Hagan, from 1965 [94] to 1969 and then, when I became Executive Director and we incorporated, we began for the first time to keep the records for Ministerium as well and so from 1970 through the end of this season, it represents the number, the percentage of Lutherans and non-Lutherans at all of our summer operations.

Q Including Bear Creek?

A Yes.

Q As far as 1975 is concerned?

A Yes.

Q And these, this exhibit was prepared under your supervision?

A By my office, yes.

Q By the way, what was the distribution in 1965 between Lutheran and non-Lutheran?

A Fifty-nine percent of the campers were Lutheran, forty-one percent of the campers were non-Lutheran.

Q And what was the distribution in 1970?

A Forty-three percent were Lutherans and fifty-seven percent were non-Lutherans.

Q And what was the distribution in 1975, including Ministerium?

MR. RUVOLO: Objection, Your Honor.

THE COURT: Overruled, You may state it.

A Forty-nine percent of the campers this season were Lutheran and fifty-one percent were non-Lutherans.

[95] BY MR. DITTMANN:

Q Now, what efforts have been made by the Camp Corporation to serve children with special needs and/or with special problems?

MR. RUVOLO: Your Honor, may we have a date on that as to what period of time he is talking about?

BY MR. DITTMANN:

Q At or prior to the time of the condemnation?

A At or prior to the time of condemnation, I am at a loss to speak because I was not a part of the camp at that time. The camps were, as Dr. Janson indicated, under a committee of the Synod and so it was a variety of the Synod boards and agencies that worked with the camps at that time but I was not a part of it then.

Q Well, since you have been Executive Director, what kinds of specialty of campers has the camps served?

MR. RUVOLO: Objection, Your Honor.

THE COURT: Overruled.

BY MR. DITTMANN:

A Well, we have always felt that a part of our ministry was to special need campers. Just down the road from us is Camp Wyomissing which was an underprivileged boys' camp in the City of Philadelphia and it was my introduction to the Poconos. I was one of those boys. So I was always especially interested in seeing these kinds of programs [96] developed. I think it ties in clear-

ly with our Lutheran theology which is reconciliation, getting people to meet and talk with each other so that we have made a concerted effort to involve ourselves in a variety of programs. Some start out as experiments and they work well. Some of them don't. We have had retarded children, children who are retarded, I am told to say these days, from White Haven State School with very low I.Q.'s. Last summer a thirty-seven year old woman was with sixteen year old high school students in the Ministerium program, but she functioned on their level. We have had retarded people from institutions such as White Haven. We also regularly receive inquiries from parents of exceptional children, asking if we will take them. We usually ask that we receive a write-up on these youngsters from their doctor, their therapist, their counsellor and if agreement is reached, these youngsters are accepted into camp, if it is felt that they can be benefited by functioning in a normal program. Most camps have special weeks for exceptional children. I don't happen to believe in that. We like to involve our youngsters in the on-going programs and we have had a good deal of success. We have had some failures. Some youngsters that we think are going to make it have to be sent home. Others make it. A boy with cerebral palsy this year swam the creek, took him all week, but he made it. So that we have had a regular on-going program with the exceptional [97] children from White Haven State School, from Silver Springs Institute, suburban Philadelphia. These were youngsters with learning difficulties. This was a program that didn't work. These youngsters were too hyperactive for us to handle and so we had to terminate that one.

Q What about underprivileged children?

A Again, since we were incorporated, we have the records. Prior to that, it was part of the on-going work of the Synod, and we began what we call a campership program as a corporation in 1970, having nothing to do with condemnation, but with mission and at that time we made an appeal to the congregations of the Synod to send us money that we could use to bring underprivileged youngsters into the camps. Our budget did not allow us

to directly handle this out of on-going receipts and so we had special appeals. This is continued to the point now where some of these youngsters have been with us five and six years. Some were in the counsellor and training programs and one boy with two arrests out of Wilkes-Barre is not a part of our year-around staff. So this had been going on since 1970.

Q This campership program serves children in what areas?

A In the Southeastern Pennsylvania Synod area, it serves children from what we call Center City Lutheran Parishes. This is an association of the parishes, Lutheran parishes in [98] the center city, Philadelphia, center city, through grants from agencies and through an appeal from Dr. Janson, sends a large number of campers, I don't have the stats, right before me on how many they send. It also includes underprivileged youngsters from Allentown, Bethlehem, Wilkes-Barre; sometimes we find a pocket. A pastor will contact us and say he knows of a family and this summer we had an underprivileged boy from North Wales, which is a rather affluent area, but we let the local agencies or pastors recommend these youngsters to us.

(Whereupon, a document dealing with underprivileged campers was produced and marked for identification as Synod's Exhibit No. 10.)

BY MR. DITTMANN:

Q I show you a document marked Synod's Exhibit No. 10 and ask you whether that was prepared by you or under your direction?

A Yes.

Q And what does that show?

A This shows this program starting in 1970 and up to this past season, 1975.

Q And how many campers were served, underprivileged campers were served in 1970?

A First year of the program there was 92 campers who attended our camps for 149 weeks.

[99] Q What do you mean, Pastor, by 92 campers for 149 weeks?

A Okay, we deal in what we call camper weeks because our Miller and our Hagan programs have traditionally been two-week programs: Our Ministerium program has always been a one-week program so for administrative purposes, we deal in camper weeks. A youngster can come to Miller or Hagan for, must come for at least two weeks, but can stay longer. At Ministerium, because of the demand, people are only allowed to stay at Ministerium one week, but so when we talk about camper weeks, we are saying that 92 youngsters stayed a total of 149 weeks, some for two weeks, some for one week.

Q By the way, how many, what is your date for 1972?

MR. RUVOLO: Objection, Your Honor.

THE COURT: Overruled.

BY MR. DITTMANN:

A 1972, there were 115 campers for 208 weeks.

Q And for 1975?

MR. RUVOLO: Objection, Your Honor.

THE COURT: Overruled.

A 228 campers for 364 weeks.

BY MR. DITTMANN:

Q What is the relationship between the camp program and the Tri-Square Masonic Program?

A The Tri-Square Masonic group had owned their own [100] camp. This was lost in a condemnation procedure, also, and instead of re-establishing themselves, they sought out and examined a variety of camping programs and chose one to which they would send, I believe, underprivileged boys and the program they chose was Camp Miller and now, they continue to be involved in Camp Miller-Hagan.

Q And do you know when that program began.

A No, I do not.

Q Had it begun prior to your becoming Executive Director of the Camp Corporation?

A Yes, it had.

Q Is it continuing today?
A Yes.
Q Do you know the name of the person who is active in directing the Tri-Square Program?
A The only name that comes to mind is the man who I believe is the Treasurer, who deals with my office all the time.
Q What is his name?
A Mr. Joseph Seligman.

(Whereupon, a Fee Schedule for the camp, 1963 through 1975, was produced and marked for identification as Synod's Exhibit No. 11.)

BY MR. DITTMANN:

Q Now, Pastor, I show you Synod's Exhibit No. 11 and * * *

* * * *

[122] Q And I think we can agree that the operation of the three camps that you had was better than most and left something to be desired in some respects, isn't that true?
A There is always room to grow, yes.
Q Sure. You might have wanted to have larger, a swimming pool for example rather than have the kids in the river, but still like to have the river for boating activities and things like that, isn't that . . .
A No, I wouldn't agree to that. They can swim in a chlorine pool anytime.
Q But anyway, we can fairly say that the operation went on in many ways similar to the programs operated by other camps, better than most and not as good as some?
A Generally, yes.
Q Okay, now, from your experience as Director and other experiences that you might have in the camping field, would it be fair to say that as of the date June, 1970, considering the physical facilities that existed at the three camps and considering the, you know, the improvements as well as the terrain of the property, that this would be a good camp, a good campsite?
A Yes.

Q Is that true?
And it would be a desirable site to somebody who might be in the market for buying a camp, isn't that so, assuming [123] that it was for sale, you know, available?
A There are so many variants in something like that, Mr. Ruvolo. There are things I would like to have seen changed that we would have changed if we were staying. Again, I would have to say, generally, yes.
Q In other words, generally yes, it would be marketable if it were for sale and there was no question of the act coming in or property being taken; if a camp buyer came along and looked at that site, he would say, "Well, it is a good site for a camp"?
A If there were a camp buyer, I suppose he would, or she.
Q Now, the big difference, I think we can agree between your type of camp, when I say that, I mean a religious organization-type camp, whether it be the Lutheran or C.Y.O. or Jewish camp, would be in the goals, isn't that true, or would the goals be similar?
A I would think that the goals would be similar. When you mention C.Y.O. and Jewish camps and Protestant camps . . .
Q Let's narrow it down to just religious oriented camps, the goals would be similar, isn't that so?
A On the basis, for instance of the 15-camp evaluation that we did in about 1972, there are a variety of goals and a variety of sites and programs. There is tremendous diversity, just in those, say, Protestant camps, so it is hard [124] to say, yes, we would all agree or yes, we would all do things generally the same way. It would be very difficult.
Q When I say goals, I mean the purpose of running a facility such as this is in building the character, the moral training and possibly improve on their religious education on the children that attend those camps, those children belonging to that faith?
A Generally, yes.
Q Now that distinguishes those kinds of camps from, say, the Boy Scouts or the Girl Scouts or that type of

organization camp. They do not have religious programs that your camp would have, for instance, isn't that true?

A Generally, yes.

Q And I think you testified yesterday, for example, that there was a morning session for religious classes to be given and then devotions would be in the evening at the end of the day?

A No, at Miller-Hagan they, I believe they had a total of three hours in two weeks of what they call the religion class. It wasn't a daily event. There was, at the end of the day, there were cabin devotions and at Ministerium, at the beginning of the day, there was a brief devotional period, a quiet time, introspective time.

Q There is a chapel on the camp?

A The camps each have a chapel.

[125] Q Now, that is a major distinction from the Boy Scouts and Girl Scouts and that type of thing, isn't that true?

A I doubt it, I imagine many of them would have chapels.

Q Do they have required religious programs for the children at these camps?

A I am not that familiar. I would doubt it, but I am not familiar enough to say yes or no.

Q Now, there are other types of camps as well. For example, you read in the paper almost every Sunday, football camps run by Joe Namath and Terry Bradshaw, basketball camps. Now, these camps have become very popular in the last few years, have they not?

A For a certain group of people, yes.

Q And have you any knowledge or are you aware of the fact that in the particular area, the Pocono area, that quite a few of them have sprung up over the past few years?

A I know there is a Pocono Sports Camp on Route 209.

Q Right. And those kinds of camps, their major goal is to concentrate on that major sporting activity?

A Develop a particular skill, I believe.

Q Develop a skill.

But they also have swimming, generally; they have other fields for recreation and sometimes arts and crafts?

A I can't say, I have never visited them.

[126] Q I think you mentioned yesterday that you did have a personal experience with Camp William Penn, is that correct?

A Yes, I spent a day at Camp William Penn in about 1972, '73, I believe it was.

Q And your counsel asked you, I believe, to compare the William Penn camp with the operation that you had going on at the time and I think you said that the major difference was the difference in goals?

A Yes, my impression was that this was the case.

Q Would you explain to us what you felt to be the goal of the William Penn Camp?

A Well, William Penn camps first were limited to the disadvantaged. They were, the campers were sent by various playground organizations in the city, designated playground catchment areas, whereas of course, we were open to the advantaged as well as the disadvantaged.

They didn't have the variety of programs that we offer.

Q Such as?

A Well, such as boating and canoeing. They had no boating and canoeing.

They didn't have the overnight backpacking kinds of experience that we have. They didn't have the maturity of counsellors.

Q Just limit it at this point to goals. What was the [127] goal of that William Penn camp as you saw it?

A As I saw it, the goal of William Penn camp was to get disadvantaged campers out of the city for a couple of weeks.

Q And put them in a different environment and hope by doing that, to possibly break them from some of the habits of living in the ghetto areas, eventually?

A Give them the taste of an alternative, I would think.

Q Now, how does that differ from the goal that you felt was in existence as regards these three camps?

A Well, we worked much harder in terms of program development. Anybody can get people out of the

city for a couple of weeks. We wanted to make good use of those couple of weeks with a very carefully developed program.

Our main thrust at both of our camps is to help youngsters understand the inner actions of living together so that you have youngsters on an overnight, we think this kind of thing is very important because it is on an overnight, for instance, that you can begin to work with the variety of dynamics within the group. It is the pressures of an overnight that get youngsters to have to work together. If it is ten o'clock at night and they haven't collected the wood for the fire, they are getting pretty hungry.

We are using many of these things as a means and what we are after is the dynamics of living together and how [128] that can be improved.

Q I was interested in what you said yesterday that you considered this to be a laboratory for the, I think it was the theology or the, I don't know the exact quote at the moment. Do you recall what that statement was, a laboratory?

A For church schools.

Q For church schools, right.

In other words, you were trying, you felt that this was a good place for them to get some of the good foundations of the church and the teachings of the church that would normally take place in a church school?

A No, no.

Q What did you mean by that statement?

A Perhaps I can help with an example.

A few years ago, I had a call from a woman saying she would like to place her son in the camps and proceeded, you know, to explain the different programs so she could choose and what developed in the conversation was that she was feeling guilty. It was a mixed marriage and her son had not attended church or church school and he was getting close to what we consider confirmation age, junior high, and so that she asked if maybe two weeks or four weeks in a camp might give him some Christian education and I said, "We can't

replace church school, you know; don't ask us to do what you haven't done in twelve or fourteen years."

[129] And the reason I use this as an example is that in church school or in classroom situations, whether it be in the context of religious education or general education, there are so many things that you can't learn sitting in a chair around a table, especially youngsters. At times, I have taught church school confirmation class and when you want to move towards a point, you have to say to them, "Do you remember some time when you were mad," and they were sitting in ties and suits and they are on their good behavior for an hour and they are not listening, you know, but at least, possibly they will get the content. They will get the foundations in that context. At camp, we can talk to them when they are mad, you see, and they are having the feelings at that time. They never slept with a black in the same room, with a black before. Now, when they were in their suburban home, this really wasn't a problem for them, but in the context of camp, it became a problem.

So, this is what I mean by a laboratory. We had the feelings, the living situations from which we could then help them to understand what had been talked about in church school or had been talked about in classes, where the nature department; as I said yesterday, you can look at all the pictures you want to about a frog, but until you sit down and cut one up, you are not going to know where the intestines are, you are just not.

[130] Q In your opinion, which is the most of the two, and they are both important. Let's understand that, but which is the most important aspect of these three camps; what you are just talking about, the getting to know nature, the enjoyment, love and gospel and brotherhood or is it the physical part of the program; the swimming instruction, the fishing instruction, the boating instruction, that type; which would you feel is the purpose of your camps, the most important, you know, priority?

A I don't think either would work without the other. It is like saying which is more important, the first floor or the second floor.

Q Well, they do work in other camps.
A I can't speak for other camps.
Q Or one does not exist in the other camps.
A But I can't speak for other camps and you are asking me what I think is most important. I think they are both important. You can't separate them.
Q You can't separate them.
Now, William Penn, you said that is a camp for underprivileged children. Do those children pay any fees to go to that camp?
A I don't know, I am not sure. I would doubt it, but I am not sure.
Q And you mentioned Wyomissing. That was a Big
* * *

* * * *

[138] Q Now, when you got to the religious distribution of campers, were those children included in your computation?
A Those children are included. The registration form has a spot to list religious denomination so that if they were Lutheran, they would have been counted as Lutheran. If they were not, you know, they would be listed as non-Lutheran, but that is right on the registration form.
Q By the way, would you have a copy of the registration form or application?
A Golly, I may have one in my briefcase left over from this last season.
Q Well, when you get your other records, would you see?
A I will look, yes. I could have one sent down.
Q Fine, appreciate it.
Now, according to your testimony regarding Exhibit No. 9, Synod's Exhibit No. 9, in 1965, the percent of Lutheran as against non-Lutheran was 59 percent Lutheran, 41 percent non-Lutheran, correct?
A Yes.
Q In 1966, it went up to 60 percent Lutheran, 40 percent non-Lutheran?
A Yes.

Q In 1967, it went up to 62 percent Lutheran, 38 percent non-Lutheran?
[139] A Yes.
Q In 1968, it went up to 64 percent Lutheran, 36 percent non-Lutheran, correct?
A Yes.
Q In 1969, it went up, down a little bit to 61 percent Lutheran to 39 percent non-Lutheran?
A Yes.
Q In 1970, by coincidence, that was the year that you became Executive Director?
A Yes.
Q Correct?
And it was also the year that the government acquired the property, correct?
A Yes.
Q And that year, the figures changed the other way; 43 percent Lutheran, to 57 percent non-Lutheran, correct?
A Yes.
Q Would you explain why the big change?
A I think it is right on the exhibit, sir, at the top.
Q That being on top, it says that you reflect only Miller and Hagan, isn't that correct?
A There were no non-Lutherans, non-Lutheran records before I came on the scene for Camp Ministerium.
Q Oh, I see.
A And when I came on, I said I wanted to know what the [140] whole breakdown was and so in my year end report, I received the breakdown. The other years don't reflect Ministerium; that is what it says at the top of the exhibit.
Q I see, okay.
Now, Ministerium was a little bit different from the other two camps, was it not? When I say different, I mean, not only physical in size and that kind of thing; I mean in operation of the camp.
A Programmatically, yes.
Q Programmatically. Miller was for girls, I believe?
A Boys.
Q And Hagan was for girls?
A Um-hum.

Q And Ministerium was?
A Co-ed.
Q Were they older campers?
A Miller and Hagan campers could start at age eight and go to age sixteen, but Ministerium, it was age nine to sixteen.
Q Now, we are talking about 1970, correct?
A Yes.
Q And prior thereto as far as you know from your own knowledge?
A (Witness, nodding head.)
Q So that, the program would differ because the age [141] was different with the children?
A Well, the program differed because it was a differently oriented program. It didn't have much to do with the age of the children.
Q What was the difference in the program?
A In Miller and Hagan, programs, are structured, scheduled programs with a large emphasis on the skills. As I mentioned yesterday, the various Red Cross, the aquatics and the nature, the various departments; Ministerium is as I said yesterday, a small group camp which means that we try to bring together people from very different backgrounds and in the pressure cooker of having to live and work together, help them to break through the various barriers that people have towards people who aren't like them. So that it was more of a socialization kind of camp experience than it was a, let's teach them Red Cross life saving.
Q With more of, say, the disadvantaged children being sent to Ministerium because of this type program rather than the other two camps?
A No, I think the opposite is true. The reason I think for that is that Ministerium is a more verbal program and disadvantaged youngsters often are disadvantaged verbally but they are not necessarily disadvantaged in terms of athletics and physical skills and so generally, we find that disadvantaged youngsters are better for the first couple of [142] years in the Miller-Hagan program until they become comfortable in the climate.

Q Could you give us an idea of say in 1970, how many of the disadvantaged children, if any, would have gone to Ministerium?
A Now, again, I would have that record in the motel room, I am sure.
Q You have that record.
Now, was Ministerium also at one time, I am not sure of the date, wasn't that used as a family retreat center as well?
A We were experimenting for a few years because we were most anxious to get into family camping and to work with whole families. We were experimenting, with using the campsite for family camping. It was not built for family camping and it didn't lend itself comfortably. I believe as I mentioned yesterday, our design was to have established family camping facilities across the road from the existing camp, if we were staying and because we just weren't satisfied with the product, we decided to end family camping until we were able to move and do it right.
Q Okay, now, when did you start the family camping type operation and when did you discontinue it as far as these three camps are concerned?
A To my knowledge, family camping was discontinued * * *

* * * *

[158] THE COURT: No, I think it is relevant. Overruled.
A Generally, not specifically.

BY MR. DITTMANN:

Q And by private camps, I mean camps that are operated for a profit. How are they usually referred to, in the camping business?
A Private, independent camps.
Q Private, independent camps.
Now, directing your attention to Synod's Exhibit No. 11, which I believe is before you?
A Yes.
Q And that exhibit relates to fees paid by campers?
A Yes.

Q Would you tell us, and focusing on the year 1970, the weekly fee paid by Lutherans was what?

A $45.

Q And the weekly fee paid by the non-Lutherans was how much?

A $47.

Q Are you in a position to compare that weekly fee with the weekly fee charged by private, independent camps at that time?

A Generally.

Q What would be the approximate fee per week charged by a private, independent camp be as of that date?

[159] A Camps comparable to our program, generally on a seasonal basis would be $800 to $1,000 to $1100 for eight weeks.

Q And dividing those figures by eight, you would get what?

A Something over $100 a week. We estimate that our costs run at least $18 to $20 a week more than what we charge consistently, per week.

Q Are you familiar, you have met the parents of many of the children who have been involved as campers over the years?

A Yes.

Q Have you visited them in their homes?

A Occasionally.

Q We have been discussing underprivileged children and I would ask you whether the children and their parents who have been coming to the camps over the years, not classified as underprivileged, ask whether or not they come from families of modest circumstances?

A Generally, I would say yes, because the Lutheran church generally represents a modest income, a middle income people with a smattering of professional and much higher income.

Q Then, do I understand it that the tuition rate charged Lutherans in 1970 and on the other years shown in [160] P. 11 is substantially less than private rates to your knowledge?

A Oh, for comparable camps, considerably, because we don't make a profit.

Q And has it been your experience and observation over the years that these, that the rates that are charged for your camps have enabled a substantial number of children to have a camping experience who otherwise would not have been in a position to do so?

A Yes, especially; now, I can't document this, but I am concerned that generally in life, more and more things are available to the disadvantaged than to the greatly advantaged and less and less things available to the middle income people and it has been one of our concerns that camp be available to youngsters of middle income people and we have struggled to keep the rates down for that purpose. Mr. Ruvolo said you could break even if you charged—

Q Please don't quote Mr. Ruvolo.

A I'm sorry. If we did charge another $10, if somebody has got three children, that's thirty dollars and if they are a middle income family, that can hurt and so we try to keep it at that level.

MR. DITTMANN: That's all.

THE COURT: Anything else?

MR. RUVOLO: Just a couple of questions.

[161] RECROSS EXAMINATION

BY MR. RUVOLO:

Q When you talk about private, rates being quite different from private, independently run camps, I can see that. How about, would the rates compare with Boy Scout camps?

A We are higher, generally higher than Boy Scouts.

Q How about Girl Scout camps?

A Generally the same.

Q Y.M.C.A.?

A Golly, Conrad Weiser in my area of Reading is higher than us.

Q How about C.Y.O., or something like that, another religiously oriented camp?

A I really don't know.

Q Wouldn't know, okay.

And on these children, these parents that, do you get many kinds that are repeaters, I mean, come back year after year?

A Yes.

Q Do you get many kids that come from different states?

A Some, yes.

Q I spoke with a Mr. Lombardy or Lombardo, one of your camp directors?

A Yes.

[162] Q He told me that some of the kids, you tell me if it is accurate, I don't know, he told me that some of the kids come as far away as Florida; their parents bring them up?

A One boy that I know of because we always have to make arrangements to pick him up. It is one of these instances where the father was a Miller camper. It's the traditional thing, wants his son back to grow up where he grew up, yes.

Q How about other than Pennsylvania; we know from New Jersey, I presume you get some from New York?

A Considerably less from New Jersey, but some from New York.

Q Any other states you can think of, surrounding states or otherwise?

A Delaware, Maryland; two boys from Puerto Rico, these are the ones that come into my mind.

MR. RUVOLO: No further questions.

THE COURT: All right, next witness.

MR. DITTMANN: I would like to move for the admission in evidence of the series of photographs marked for identification by the Government and submitted to the jury, i.e., the photographs of Camp Ministerium, I think it is Government's Exhibit series No. 4 to 4-F.

THE COURT: I am going to admit into evidence every exhibit offered by the plaintiff if it has not been received in evidence.

[163] MR. DITTMANN: The Government hasn't offered them so I would like to offer them, the five photos.

THE COURT: Is it all Government's exhibits are now in evidence as well as the Synod's exhibits?

MR. DITTMANN: I think there is one that I objected to, 33, 34.

THE COURT: May I see counsel at side bar.

(Discussion off the record at side bar.)

ROBERT NEUMEYER, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DITTMANN:

Q Pastor Neumeyer, where do you live?

A I now live in Philadelphia.

Q And what is your profession or occupation?

A I am a clergyman and a director of the inner city work for the Lutheran church, Southeastern Pennsylvania Synod.

Q Where are you headquartered?

A Nineteenth and Chestnut is my office. The Synod office is in Germantown.

Q And how long have you served as director of the Center City Parish?

A It will be 11 years this September.

Q Would you tell us, please, what the function and responsibility of the Center City Lutheran Parish is?

[164] A Center City Lutheran Parish is a loose federation of 23 Lutheran churches, all in the inner city and deep ghetto areas of Philadelphia. The purpose is to reach out, primarily to that segment which was, is normally called the underprivileged, the unemployed. It is predominantly black and Spanish with some poor white mixed in, but it is the, racially speaking, it is the black section of Philadelphia. And we try to expand the ministry there in terms of the church and service to the community and so this special organization was developed 11 years ago.

Q And how many churches did you say are included in this parish?

A Twenty-three.

Q And when I refer to the parish in the future, I will be referring to its actual title, I will mean the

Center City Lutheran Parish. By the way, what is your educational background, Pastor?

A Born and raised in Allentown, went to Allentown public schools. From there, to Muhlenberg College and then, the seminary at Philadelphia, Lutheran seminary.

Q You graduated from the seminary when?

A February of 1945, I think.

Q And then after your graduation, what was your pastoral experience?

A Well, I was in the United States Navy for a couple [165] of years as a chaplain in the South Pacific and then from there I went to Williamsport, Pennsylvania, for about five years and then to Wilmington, Delaware, in a congregation, pastor of a congregation and from there to Philadelphia.

Q And you have been in your present position almost 11 years?

A Right.

Q What do the activities of the Center City Parish include?

A Well, of course, each congregation is autonomous in that they can do the things that meet the needs of their particular neighborhood best and my job is to try to coordinate some of those. In other words, if five or six bases need a special kind of thing, then it is my job to work at that. For example, college motivation. Our kids, ten years ago, we had practically none in college. Today, we have about 150 in college and that involves tutors, remedial reading. It involves motivation trips to various college campuses. It involves getting jobs, it involves setting up savings accounts so that the kids are putting money away that they can go. It is that kind of thing. We are in day care. We have about 500 children in day school in preschool education programs. We do some work in community organization, trying to change neighborhoods. We do some gang work.

Then, there is the normal, what I call the normal [166] things that most congregations do. We do leadership training in terms of evangelism, stewardship, what have you. We run a very large summer, we call it a summer Bible camp which is not, which is different from the residential camping that we are talking about here.

We had 2,700 involved in that program with a staff of nearly 200, all of which are now indigenous leaders. Ten years ago when we started, we had no leadership at all for the summer programs from our own churches. College kids came in to work with us. Now, we have our own. So it is that widespread of a variety of programs.

Q Well now, this case pertains to the camping program of the Synod.

A Right.

Q Along the Delaware River?

A Right.

Q And you are familiar with the three camps that are involved?

A Right.

Q In fact, you have been sitting here in the courtroom this morning, have you not?

A Yes.

Q And would you tell us, would you direct your attention now to your parish activities that deal with summer residential camping program?

A Yes. Well, some years ago, we felt that we had to [167] do something to try to get our kids the benefits of a good residential camping program. Prior to that time, they had gone to some camps that the city or model cities or the anti-poverty program had run and you may have, there were some headlines about investigations of some of those camps. One particularly that was run in Delaware, which the conditions were horrible, the leadership was bad and we said, "We are going to make every effort to get our kids into a quality camp." So, we looked at our Synod's camps and said, "That's where we want to go." So, it was my job then to try to raise the money to help kids to go and to negotiate with the camp to see if we could get some special rates. So that, this past year, we had, let's see. We managed to get 287 camp weeks at Miller, Hagan and Ministerium and 121 weeks at Central Pennsylvania Synod Lutheran camps and the funding of that is a joint funding. The parents, every family must pay something. No child goes for nothing unless it is an

extreme emergency but we don't like the hand-out systems so every family must pay something. The Synod raises campership money and I write proposals to foundations, trying to get assistance and then, of course, there is the discount that comes from the Camp Corporation but our reasoning for going beyond is because the way the segregating housing patterns are now in Philadelphia, our kids can literally go through school without knowing any white kids at all and the hassle [168] that is going on in the schools and the busing and all that, we feel has to have some positive approach and camping for us is. It is the time when our black kids can get to know white kids in an excellent setting and when the white children, who come from other sections of the Synod and very rarely have communication with black kids can do that and we feel that a racial aspect, it is very important and foundation money has frequently come to us because of it.

Q May I interrupt. Pastor, when did you first start sending these children to the Synod, the three Synod camps in Delaware River?

A Well, there have always been some children who went on their own. Obviously, not all black people are poor people and there were some of moderate means who could afford to do it.

We began, let's see. I guess it would have been, I know that when I came in 1964, there were some children who were there but it has been particularly in the past five years that there has been a big effort and where we are able to get foundation assistance and where the Camp Corporation itself was of great help to us in making it possible. So, there has been an increase. I would guess, well, it certainly has been more than, more than quadrupled in the past six, seven years, the number of children and the number of weeks.

Q How are these children selected, who are sent under [169] your program to the Synod's camps?

A They are selected literally by the congregation or the pastor or some official within that congregation, some worker. All of the kids are not Lutheran, but all of them are attached in some way to a program run by one of our

churches. In other words, if we have, well, say, a tutoring program, that program is not just for kids who are members of the Lutheran church, but it is for them and their friends so that the child has some association with the congregation and he is then recommended, normally by the pastor, but they are not all stamped Lutheran.

Q Well, then, these children indicate their interest in attending the camps?

A Right.

Q And do their families, what portion of the cost of camping is contributed by their families, if you know that figure?

A This year, we tried to get a minimum of $25 or $30 from the family and of course, sometimes the churches themselves, the congregations will engage in some fund raising. One of the congregations is now planning for next year and all of the families who plan, who want to have their kids go to the camp next year will be involved in fund raising activities from now until next June; chicken suppers, bus trips, anything so that the average, the average family this year gave between [170] $25 and $30 towards his, a week at camp.

Q What is your theory for requiring the family to make a contribution towards the cost of camping?

A Well, you know, we are in the middle of a situation where family structures are dissolving. We feel it is one of the big problems in inner city life and so we try to involve mothers and dads as much as we can and also, we feel that when a child has contributed in some way to going, that he will appreciate the experience much more than if you just hand it to him.

THE COURT: I think we better stop here. It is 11:30. We will resume, Members of the Jury, at one o'clock or as soon thereafter as possible. I have a matter at one. It won't take long. I am sorry to do this, but we have such a crowded schedule, I have to just use every available hour.

I want to see counsel in chambers, please.

(Whereupon, the noon recess was taken.)

(Discussion at side bar.)

MR. DITTMANN: It is hereby stipulated between counsel that the cost of constructing functionally equivalent substitute facilities similar to the existing Delaware River camps formerly owned by the Synod substantially exceeds the fair market value of the condemned camps as determined by the conventional approach.

(Whereupon, the discussion at side bar * * *

* * * *

[200] With the Court's permission, can we excuse Mr. Seligman?

THE COURT: You are excused.

MR. DITTMANN: May we take a short recess, now?

(Whereupon, a recess was taken.)

MAURICE BONE, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DITTMANN:

Q Mr. Bone, where do you live?

A In Oreland, Pennsylvania.

Q What is your profession or occupation?

A I am a consultant in camp development in the firm of Bone, Wright & Associates.

Q What is your background in the camping field?

A Well, from 1950 to 1970 I was on the national staff of the Presbyterian church in Philadelphia. My responsibility was camp programs for the first five years and the last fifteen was counsellor for campsite development.

Q What were some of your duties and responsibilities during your period of employment by the Presbyterian church?

A During that time, there were approximately 80 camp properties developed for camping programs throughout the Presbyterian church in the United States and that I had a part in development. At that time, also, I was a member of the [201] Committee of the National Counsel of Churches, responsible for camp programming, preparing materials for leadership and program. At the same time, I was a member of the American Camping Association which is a national organization serving camps and for a period, was on the national board. At that time I was chairman of the Committee of Site Selection and Development for the American Camping Association.

Q What is your educational background, Mr. Bone?

A College degree in agriculture, University of Illinois; seminary degree, Bachelor of Divinity, McCormick Seminary in Chicago.

Q And are you ordained in any church?

A Yes, Presbyterian church, United Presbyterian Church.

Q What is the American Camping Association?

A The American Camping Association is really an association, perhaps a federation would be as good a term as another, bringing together all the major camping groups in America; the private camps, the agencies, the Boy Scouts, Girl Scouts, Y.M.C.A., Camp Fire and Salvation Army, Jewish Welfare camps, Catholic camps, Protestant camps, church; it is broadly representative of the major camping groups in America.

Q Do you know how long the association has been in existence?

A I think it started somewhere in the '30's as an [202] American Camping Association.

Q And you previously said that you were chairman of the Site and Development Committee, is that correct?

A Yes, for a period of time.

Q And what other activities did you engage in on behalf of the American Camping Association?

A We kept getting inquiries from camping groups in America, asking about the future trends and all aspects of camping so we brought about a conversation between representatives of the camping interests and the federal government. I was on the committee. In fact, was chairman of it for eight years from 1964 to 1972 when these meetings were held nationally involving about fifteen departments of government and including the Corps of

Engineers, Health and Welfare, Forest Service, Soil Conservation Service, Parks Service and so on and representing all of the camping interests, the groups that I just mentioned.

Q What were some of the topics considered in these meetings between governmental officials and the camping association?

A We were concerned about policies, how policies are formed, the relationship between the federal establishment, the public and the private sector. We were concerned about establishing relations between the public and the private sector.

[203] For example, the Girl Scouts discovered that the outdoor recreation was concerned about setting apart some natural, restoring some trails, and so they volunteered to help with that.

The Forest Service was developing some guidelines for the development of the camping facilities in the Forest Service. They, therefore, knowing us, brought together a group of eighteen of us, representing eighteen different camping groups to help them develop the policy for all four service camps.

Q You earlier said that you were associated with Bone, Wright & Associates?

A Yes.

Q How long have you been associated with that firm?

A Since 1970.

Q And what is that business of that firm?

A Our business is to provide continuing consulting service to camping groups whenever we are invited.

In 1970, when I retired from the Presbyterian Board of Christian Education, I was not replaced and neither were my counterparts in several other denominations. The only denominations now which have national assisance for camping programs are the Lutheran church in America and the United Methodist church. So we provide consulting service in all aspects of camping from planning to operations for church and [204] agencies throughout the nation. We have done a great many evaluations in about twenty states, but we start from the idea to the operation, the total thing.

Q Would you give us an idea of some of the states and some of the projects in which you have made studies in the last five years?

A Northern California, we started there thirty-five camps; Oregon, Washington, about twenty in one and twenty-eight in the other.

Q Who is the sponsoring agency?

A Those were inter-denominational, ecumenical groups. We studied the Baptist camps in Iowa and Minnesota, the Methodist camps in Colorado, Utah and Idaho, the ecumenical group in the State of Virginia, the Presbyterian camps in North Carolina and in South Carolina and Georgia. I was with Pastor Gulliford in 1972 when we made the studies here in eastern Pennsylvania. We also made a similar one in central Pennsylvania and in western Pennsylvania.

Q Now, directing your attention to the studies you made in eastern Pennsylvania, at whose request was that study made?

A It was made by an inter-denominational group, ecumenical group, including the Presbyterians, Methodists, Lutherans, Episcopalians, Baptists, United Church of Christ, Disciples, Moravian.

* * * *

[211] suitable campsites along that section of the Delaware River south of Shawnee to Philadelphia?

A Just my observation as I have driven up and down the river.

Q What is your observation?

A Observation is that suitable sites would be hard to find. Also, in view of the escalating land prices, particularly of water front property.

Q Why would a suitable site be hard to find on the Delaware River?

A Well, my observation, it is held either by private groups who like it there and who don't want to give it up or by industry or by groups who have purchased it for that very reason, knowing that this is highly desirable land.

MR. DITTMANN: Cross examine.

CROSS EXAMINATION

BY MR. RUVOLO:

Q Mr. Bone, I have some figures here. I just want to know whether you would agree with me.

In connection with the decline of camps, my information is, and I am talking about the registered camps in Pennsylvania, in the State of Pennsylvania, that in 1970 there were some 827 and that there has been a decline in 1974, in 1975 to about 772. Do those figures kind of match up with your recollection; I mean, with your opinion?

[212] A I don't have any idea of the number. I just know that they have been steadily declining.

Q And other information may be, you know, Monroe County, my information is they have gone from 45 to about 39 over that same period of time.

A That could very well be.

Q Would that fit in generally with what has been happening, there has been a decline? We were just talking about water and you said, I think, that since 1969, '65 or '70, the statistics have shown that the number one interest is water.

Now, when they talk about water, that could be water along the river?

A (Witness, nodding head.)

Q It could also be lake?

A Yes, lake, recreational water.

Q Good ponds on the property?

And we know that these three camps are situated right along the Delaware River.

A Right.

Q You said you were up to Bear Creek property, which has been purchased. Is there any water on that?

A A stream, at present.

Q Right; now you are an expert. If you were going out to look for water property, water oriented property, would the * * *

* * * *

[256] properties, that they had their highest and best use for camping purposes.

Q Would you tell us why?

A Yes, in the first place, they were all extensively improved for camp purposes. Miller and Hagan, more so than Ministerium but they were all designed and used for camping purposes.

The buildings were in generally good condition. They had little adaptibility for any other use, other than for camping purposes. There was a demand for camping purposes in the area and I felt that the highest and best use, the most practical use of the site was for continued use in their present form.

Q Now, you said that there was a demand for campsites in the area. Were there other or are you familiar with other campsites or camping operations and say, in Monroe County?

A Yes, in 1970, there were approximately 45 other camps within the county alone. There are about 800 in Pennslyvania as total, but of those, about 45 were in Monroe County.

Q And could you tell us approximately how many of these 45 you had the opportunity to examine or visit or something of that nature or become familiar with them?

A I would say over the years, I might have seen half of them or about 20 of them, altogether.

Q Now, generally speaking, how did these camps compare * * *

* * * *

[262] Q Would you explain what the phrase in that definition of allowing for a reasonable time means?

A Yes, this can vary materially. For instance, maybe many of you have been involved in the, either purchase or sale of your own home.

In the last 15 or 20 years, we have been in a very active real estate market and houses as a general rule have turned at a fairly rapid rate. When you get into more specialized types of real estate, if you start to think of an industrial plant, a steel mill, an iron mine or something of that nature, that is extremely technical, extremely complex. And there is a very limited market for it. Then, it could take a much longer time to sell a property of that kind than it might a house or a typical type residence.

Q What would you feel, assuming that these properties were for sale on June 15, 1970, what would you feel would be a reasonable time for, to allow for a sale of such a property?

A I would thing a property of this kind, it might take six months to a year in order to find a buyer that could use it to its best use and find it adaptable for his purposes.

Q Did you find that there was a market for this type of property?

A Yes, sir.

Q Around June, 1970?

A I did.

[263] Q Would you tell us why or what led you to that conclusion?

A Well, in the process of making our appraisal of these particular properties, one of the main things that we had to do was to go out and investigate the market, find out what activities were going on in the market and find out if these properties were suitable and were adaptable for continued use as a camp and we uncovered a number of sales of camp-type properties that were sold for continued use as a camp or they may have been sold for residential subdivision or some other use, but the majority of them were sold for continued use as a camp.

Q Would it be fair to say that in around 1970 and absent, you know, the acquisition by the government or the project being involved that there would have been a demand for this type of property?

A Yes, sir.

Q On the open market?

A In my opinion, there was, yes, sir.

Q Would the fact that the property was located along the river and with the so-called water front property, would that have increased its demand as a campsite or any other reason?

A Well, if you would compare that advantage to the property that didn't have any water, yes, it could. If you [264] compare it to others that have a lake or other suitable water facilities, I don't think, or at least there wasn't any evidence on the market that it made any substantial difference. I think as was stated previously, one of the major requirements for a camp is a water facility of some kind and we don't send our children to camp with the idea that they are not going to be able to go swimming in the middle of summer and that is one of the primary assets of the camping facilities.

Q Mr. Moore, you have mentioned that there have been some sales at campsites in camping, actual camps that took place?

A Yes, sir.

Q I show you, well, how many sales did you find that took place in and around—

A Oh, in Monroe County alone, I think we made up a list of 11 sales that had occurred. There were others besides those but there were 11.

Q All in Monroe County?

A Yes, sir.

Q And could you tell us the years during which these sales took place?

A Yes, the earliest date would date from 1966. The latest transaction that I have on this particular list is December of 1972.

Q Did you prepare an exhibit showing the location of * * *

* * * *

[325] Q For the purposes of what?

A Establishing fair market value.

Q Did you prepare an appraisal establishing fair market value?

A Yes, I did.

Q So that you found there was fair market value for this property?

A I don't follow your question, whether I found it was a fair market value.

Q You said you prepared an appraisal for the purposes of finding fair market value, correct?

A Yes, sir.

Q As of what date?

A As of June 15, 1970.

MR. DITTMANN: I object to that line of questioning. We didn't develop this. This is not proper cross examination.

MR. RUVOLO: Oh, yes, it is.
THE COURT: Let me see counsel at side bar.

(Discussion off the record at side bar.)

BY MR. RUVOLO:

Q So that as of June 15, 1970, did you find that this property had fair market value?
A Every property has fair market value, yes. This had a fair market value in 1970.
Q And would you give us your definition of fair market [326] value?
A Fair market value would be that amount expressed in monetary terms that can reasonably be anticipated by a willing and informed seller would receive from a similarly willing and informed buyer, provided both parties were fully aware of the uses to which the property can be placed and were under no undue pressure to buy or to sell.
Q So in other words, would it be fair to say that that is the value that the property would bring if it was put up for sale on the open market with neither party being forced into it, either the seller is not forced to sell and the buyer is not forced to buy; that would be the price that the property would bring at that time?
A Yes, sir.
Q Okay, now how does that compare with your statement or your definition of ready market?
A Well, you will notice that my definition did not include the term, ready market. Ready market is a definition of the preponderance of buyers of the number of buyers that are in the market place for that type of property. This is in the sense of selling a property. When you are talking about ready buyers, you are talking about those buyers using again that reference, waiting in the wings to buy this type of property. That is a ready market.
Q In other words, as you said before, buyer in hand?

* * * *

[341] MR. RUVOLO: It would be the Government's intention at this time, Your Honor, to renew its motions

of yesterday and as well as to ask for additional relief. However, in view of the time situation and the presence of the jury, we would like to just reserve this right for a future time.
THE COURT: There is no objection to that, is there?
MR. DITTMANN: No objection.
THE COURT: I will say at this time, you have renewed your motion of yesterday by reference to it and I will permit you to do that again later and supplement it if you want to with other reasons.

(Whereupon, the discussion at side bar was concluded.)

JOHN LEVKULIC, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DITTMANN:

Q Mr. Levkulic, where do you live, sir?
A I live in Pottsville, Pennsylvania.
Q And where is Pottsville, Pennsylvania?
A I would say, about 50 miles northeast of Harrisburg, 50 miles north of Allentown and about 30 miles southwest of Hazelton.
Q And where is your place of business?
[342] A We have two offices; one in Pottsville and one in Tamaqua, Pennslyvania.
Q And what is our profession or occupation?
A I am a civil engineer. We have a consulting architectural and engineering office.
Q What is the name of your firm?
A The name of our firm is Bennest Corporation with the association of Levkulic and Bensinger as the architectural partnership.
Q Would you keep your voice up a little bit so that the jurors here can all hear you. If you get a little hoarse, your throat gets tired, let me know and we will get you some water.
MR. RUVOLO: May I approach the bench, your Honor, again just for a minute.

THE COURT: Yes.

(Discussion off the record at side bar.)

THE COURT: Members of the Jury, in cases of this kind, there are several methods of evaluation and one of them is a principle known as the substitute facilities doctrine. Another is known as the fair market value and we are now starting testimony with respect to the substitute facilities doctrine and after that testimony is finished, we will ask you to, after the closing speeches and charge of the court, we will ask you to deliberate and reach a * * *

* * * *

[351] A Yes, sir, we were retained to make a design, prepare the cost estimate for a functionally equivalent facility to be constructed at the Bear Creek Lakes as they existed out in the Delaware River sites.

BY MR. DITTMANN:

Q All right, are you familiar with the Bear Creek site?

A Yes, sir, I am.

Q How long have you been acquainted with it?

A As far back as 1964, our firm was retained to perform boundary and topographical surveys in that area and I have been familiar with that site on and off since that time, sir.

Q What about the three Delaware River camps of the Synod? What is your familiarity with those sites?

A My familiarity came in 19— latter part of 1971, and early part of 1972, my personal familiarity. There are people in our firm that had familiarity with the camp earlier than that time, but personally at that time, when we were retained to do this study, we had this commission, we did go up and we measured each and every one of the buildings at the sites and made our own investigations on the sites at that time, starting at that time.

Q Were you able to examine the facilities, the buildings and structures at Camp Miller?

* * * *

[358] so, what were they?

A There were some additional costs involved because of the time of design, happening, occurring in 1972, let's say.

First of all, we had camps that were accredited by the American Camping Association, so therefore, when we reproduced, for instance, a camper's cabin at this site, we had to follow certain regulations that they have in the design of camps. I would say that the American Camping Association affected mainly the campers' cabins only in that they got slightly larger than they have existed in order to get accredited, we had to design with those regulations. Also, our Pennsylvania Department of Environmental Resources have their own bulletins for, and regulations for camp and campgrounds. These dictate the number of toilet fixtures you might have for the number of campers, number of lavatories, showers; things of this nature. We found that their regulations slightly increased the number of water closets, et cetera, lavatories, showers, that we had to have at this camp.

The county enforces a national plumbing code up there and there again, in order to design with the national plumbing code, we had to double check the Department of Environmental Resources regulations again, the national plumbing code again as they related to the number of water closets, showers, lavatories and this would be the affected [359] area.

The only other additional cost that we found was in the Department of Environmental Resources regulations for kitchen areas. Kitchen area regulations now demand that floors, walls and ceilings be of a highly impervious-type of material.

THE COURT: Would you repeat that? I didn't quite get that.

A I am sorry. The Pennsylvania Department of Environmental Resources has a regulation dealing with the design of kitchen facilities now presently requires a hard durable surface on all floors, walls and ceilings and this added somewhat to the cost of the kitchen areas in the new camp facilities.

Q Did these requirements that you have just described apply to the facility at the three river camps?

A In my estimation, no, sir. The camps were existing before possibly, before these regulations came into effect and therefore, they were allowed to exist under those regulations to the best of my knowledge, to the time that they were, well, I know some of the camps were torn down.

Q Continuing with the additional costs that were involved here, what was, what access problems, if any, were there?

A Well, we had an access problem only because that, to get to this particular location, we had to come through, * * *

* * * *

[408] Bear Creek site.

Q And Exhibit A lists these facilities item by item, does it not?

A Yes, sir, on the first page of two pages, we have "A-1", "A-2", up to "A-14". Each one of those item numbers is for a particular building or particular building such as a dining/recreation facility or a campers' cabin, pump house, staff cabin, classroom building; this type of thing. Now, for each one of those items, we also have estimated cost of construction.

Q And those items in turn are referred to on the site plan previously marked as Synod's Exhibit No. 14-A-1, isn't that correct?

A That is correct, sir.

Q So, just to further illustrate your point, the first item appearing on Exhibit A is what?

A Dining and the recreation hall.

Q And what is the unit cost of that facility?

A We estimated it at, and now this is as of 1970 cost, $111,274.

Q Incidentally, as far as all of your, as this exhibit is concerned, all of the cost data is as of what date?

A June, 1970.

Q Would you explain again to the jury how you arrived at the unit cost figure of $111,274 for the dining and * * *

* * * *

[422] Exhibit E. What does Exhibit E cover?

A Exhibit E covers our estimated construction costs for the dam at Bear Creek Lake.

Q And the dam, you have previously described the dam and the lake but perhaps you might mention again the size of the lake?

A The lake formed by the dam is approximately, I believe, 10.4 acres in size, about 1400 feet long and it contains about 3,000 lineal feet of water perimeter.

Q I believe that earlier you pointed out to the jury a cross section of the dam, did you not?

A Yes.

Q That was the slice of bread as I described it?

A Correct, sir.

Q So that, what is the principal cost involved in the construction of the dam as shown by Exhibit E?

A Well, earth work, of course, the body of the dam is composed of a concrete core with a lot of earth surrounding it, so the highest cost involved would be the earth and the concrete involved.

Now, one of the main items of cost was of concrete spillway design on the dam. That spillway is regulated. You have to design as per our Department of Environmental Resources to carry flood stage such as a river flood stage and in so doing, this gets to be quite a large structure so it [423] represents a good healthy part of the total cost.

Q What is the total estimated cost of the substituted water facilities as shown by Exhibit E?

A Total cost on Exhibit E is $658,129.

Q Now, continuing to Exhibit F, what does Exhibit F show?

A Exhibit F shows the estimated cost for constructing three beaches on the designed lake at Bear Creek.

Q And what are the principal cost items that are shown there?

A You will have a beach composed of sand which will be a principal item. You also have some, well, Bituminous base, of course, we like to put it under the sand for a beach construction. You have a floating diving board, lifeguard chairs; things of that nature.

Q What is the total estimated cost of the beach construction as shown by Exhibit F?

A At each beach we estimated $10,200, so for the three of them, $30,600.

Q By the way, did you make any estimate of the cost of replacing the water front facilities as they existed at the old camps?

A Yes, sir, we were requested to go up to the Delaware River, investigate what was existing there to come up with an estimated cost to rebuild those facilities right there.

[424] Q How much would that have involved?

A I don't recall offhand, but I know it was higher than this estimated cost for the replacement at Bear Creek Lake.

Q In other words, the cost of these beaches is substantially less than the replacement cost of the water front at the three Delaware River camps?

A Yes, sir, it is.

Q Now, continuing with Exhibit G, would you tell us briefly what that covers?

A Exhibit G deals with all the roadways designed at the new Bear Creek site. It includes, of course, all the excavation, Bituminous, asphalt covering, the base materials used, the shoulders, guardrail involved, storm sewer pipe that would go under the road to take care of whoever would cross the streams and when you have a storm sewer system, of course, you have head walls, vent sections and the cost of the bridge is also in this estimate. And we also have erosion, sedimentation control plants, that are required by the D.E.R. which we have also added in the estimated cost for that work.

Q By the way, all of these, the three river camps did have frontage on public highways, did they not?

A That is true, sir.

Q And those roads, as you will recall, passed through campsites, the subject through here?

[425] A That is correct, sir.

Q What provision have you made for an access road in this estimate?

A As described on the plans yesterday, we have made provision to get off of Route 115 into this site and we designed a road from Route 115 into the Bear Creek site.

Q Is that, is the cost of that access road included in Exhibit G?

A It is, sir.

Q And what is the approximately distance of the access road, if you know?

A Somewhere, approximately one and a half miles, I don't remember the exact distance, sir.

Q Now, within the campsite area, it has been necessary to make provisions for connecting roads, has it not?

A Yes, sir, it has.

Q Can you give us the approximate distances involved in the interconnections?

A I know it was in a report I made, sir, but I don't recall those numbers offhand.

Q And those, the cost of those connecting interior roadways are included in Exhibit G, is that correct?

A That is correct, sir, all the roadways we have designed are included in the cost estimates of Exhibit G.

Q Now, would you please refer to item 25 of Exhibit G [426] and tell us what that is.

A Item 25 is the bridge, bridge that we went over on the plans, that was necessary as we crossed Bear Creek to get to the other side of the lake to form Camp Miller.

Q What is the estimated cost of the bridge?

A The estimated cost of the bridge is $49,500.

Q Now, what then, sir, is the total estimated cost of the road system as itemized in Exhibit G?

A Our total cost for the Exhibit G is $595,450.

Q Continuing with the water system, which is Exhibit H, I ask you what that is; what is included in the water system?

A Okay, for the three camps, of course, we have to design water systems. The Exhibit H is an itemized cost estimate of all the items that we feel are necessary to produce or to provide this water supply, storage and distribution system at the, for the three sites. It itemizes the amounts of cast iron pipe of various sizes from six

inches down to two inches, we have also copper pipe itemized that would take the water from the mains into each of the buildings. We have some drinking fountains, necessary gate valves to control that water. We have three pump houses, three wells with the pump house equipment. We have three water storage tanks. All of this is referred to as the water distribution system.

Q I believe you testified earlier that longer water lines would be required for gravity reasons, is that correct?

[427] A Well, they were required, there were longer lines at this site as compared to the Delaware River site because the Delaware River, for several reasons, the Delaware River sites were three separate, where they had their own private, one individual system for each camp. Here, we tried to combine as much as possible and the fact that the topography made us move further away from the camps for our water storage tanks, we had longer lines to get back into camp, but I don't remember exactly how much this increased the system, the longer length of line, but I know there was definitely additional cost involved.

Q How about the pipe size?

A Pipe sizes I feel on this new camp are somewhat larger; that is, our larger sized pipes only because of the new, let's say, the more up-to-date way of computing the size of pipe for the amount of water going to be required. I think the best way to explain that is that very possibly at the existing camps on the Delaware River, you might have started out with just a few buildings in some of the camps and then they kept on adding on and they kept just adding onto the size of pipes that were there whereas if it would have been designed as a total facility by an engineer in the beginning, I believe he would have started out with some larger pipes, would have allowed for expansion to happen. We didn't allow for anymore expansion to happen at the Bear Creek [428] site than what we have planned for, but when we worked this backwards from how much water was going to be required at each of the facilities for each of the camps using standard engineering procedures, we have sized the pipe sizes what we feel they should be.

Q What, sir, is the total cost of the water system as shown by Exhibit H?

A Our total cost in Exhibit H for the water system is $368,859.

Q Finally, I would refer you to the item out of power lines and ask you whether or not you have made an investigation of that item?

A Yes, sir, to bring power into the site and to distribute it to each of the camp areas defined, it was necessary to bring the primary power supply into the site. Now, this, of course, the power supply is controlled by the Pennsylvania Power and Light Company and it is common in projects of this nature to contact that public utility to arrive at a cost of what they would charge the client to bring their power line into the site. We did that in 1972. We got a price from them and now to come back to the 1970 estimate, we have applied a depreciation-type factor that would give us this $35,000 that you see there.

Q And what is your estimate of the cost of bringing the power line into the site?

[429] A $35,000.

Q And that, now, turning to the final page of Exhibit No. 16; that is a summary, is it not, of the estimated costs to replace the camp buildings and facilities?

A That is correct, sir.

Q That includes each of the exhibits which you have just described and it lists the estimated cost of each of the three items appearing on that exhibit, does it not?

A That is true, sir.

Q And what is the, and that includes Exhibit A to H, inclusive, plus electrical distribution, does it not?

A That is correct, sir.

Q Now, what is the total cost of all of those items which you have previously described?

A The total cost is $4,361,633.

Q That represents the total cost of Camp Ministerium, which is Exhibit A, Camp Miller, which is Exhibit B, Camp Hagan, which is Exhibit C, and the sewage system which is Exhibit D, dam construction, Exhibit E; beach construction, Exhibit F; roadway and bridge, Exhibit G; water system, Exhibit H and the power line or electric

distribution which is referred to on the summary as Exhibit I, but I don't find it attached to the exhibit.

A No, there wasn't any estimate for that particular thing, item, sir. There wasn't any separate exhibit, I should [430] say, for that particular item.

Q Total estimated cost of $4,361,633 represents the total estimated cost of constructing replacement facilities that are functionally equivalent to the three river camps as they existed in June of 1970, is that correct?

A That is my professional estimate, sir, yes.

Q Mr. Levkulic, are these estimated costs to which you have just testified conservative in your opinion and if so, what would you base your statement on?

A I think they are conservative because there are some factors that we as engineers did not have at our hand. For instance, we had some subsurface data, core boarings that were done down below our site of the dam that we are hopefully able to interpolate to give us conditions of what the subsurface would look like below our new dam. Knowing these subsurface conditions, of course, aids us in the preparation of our design and our cost estimates because then we know beforehand if we have any unusual conditions with which we have to deal with. We have assumed only the conditions that we found that were known for a site below our design and that, of course, is an unknown. If this dam were to be constructed and we started digging and found something unusual, it could upset that cost estimate.

Q Would it then tend to increase it or decrease it?

A If there are unusual conditions, it would tend to * * *

* * * *

[432] Roy Gulliford, Mr. Tom Feasor, who was a chairman of that and our first meeting was at the offices of Attorney Ober Hess in Philadelphia.

Q You met at the offices of Attorney Ober Hess in Philadelphia?

A That is correct, sir.

Q Mr. Hess is an associate of the same firm as Mr. Dittmann?

A That is correct, sir.

Q And when they retained you, what did they tell you they wanted you to do?

A They told me that they wanted to provide substitute facilities functionally equivalent to those existing on the Delaware River at their Bear Creek campsite, that we were to use our best judgment in preparing designs for contractors to estimate so that they could get an accurate cost of what it would cost to reproduce those facilities. I think generally that sums it up, sir.

Q So that they told you that they wanted you to prepare these plans in conjunction with their Bear Creek site, is that correct?

A At their Bear Creek, for construction at their Bear Creek site, yes, sir.

Q So that you in no way participated in the selection of the site?

* * * *

[518] bid say in January, where there are no permits granted and be expected to stick to the same price, if the permit wasn't approved until seven or eight months later?

A No contractor would, but a contractor at this time in bidding wouldn't know if there is a permit or not, sir.

Q He is assuming that the permits would be granted before construction starts?

A Before construction starts, or in many cases, the contractor is required to obtain permits, but in this case I wouldn't expect them to get all the permits that you mentioned.

Q You would expect to get a few, though, wouldn't you, the sewage treatment plant, for example, pretty expensive operation?

A L and I, and the sewage.

MR. RUVOLO: That's all.

THE COURT: That will be all.

RICHARD SCHAEFER, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DITTMANN:

Q Pastor Schaefer, where do you live?

A Laureldale, Pennsylvania.

Q And where is Laureldale?
A Laureldale is a suburb of Reading.
Q And what is your profession?

* * * *

[520] Q What connection have you had with the Lutheran Synod Camp Program?
A My connection with the camping program began in 1955 when I served as a counselor at the Ministerium Camp in then developing small groupatic camping program. I was counsellor for one year, Assistant Director the next year and director of the program the following year. And then, stayed in that program until approximately somewhere around 1965, 1966.
Q Were you doing that in addition to your pastoral duties?
A Yes, sir.
Q And would you tell us when you first became, what involvements you had with the search for a new campsite?
A 1963, I was appointed to the Site Committee, by the president of the Synod and that was the committee to search out a site to replace our river camps.
Q And who appointed you to that committee?
A Dr. Samuel McKade (phonetic spelling), president of the Eastern Pennsylvania Synod at that time.
Q And who were some of the other members of that committee?
A Pastor Jaxheimer, oh, let's see, Mr. Bishop, Pastor Maynard Hallock and Mr. Parksmith and myself.
Q And you were appointed you say in early 1963, is that [521] correct?
A That is correct.
Q Now, tell us what you did after your appointment to the committee?
A After my appointment to the committee, of course the committee met and we established some criteria for going out to look for a new campsite.
Q What were those criteria?
A The criteria were these; first of all, to find a site where we could transfer the programs of our three camps; secondly, following the guidelines that we received from the American Camping Association, two acres for every camper. We would have to look for something in the area of 1200 acres of land. Thirdly, our concern was to find a site wherein we could maintain the water front programs that were so much a part of the Miller, Hagan camping experiences.

Q What about access ability?
A We agreed that the camps should be located in the Poconos because this is where our present camps had been located and that they should be located in such a way as to be accessible to the entirety of the Synod, which at that time extended from Philadelphia up to Sayre, Pennsylvania, on the northern boundary of the State of Pennsylvania.
Q Now, that Synod was subsequently divided into two Synods?
[522] A That is correct.
Q And the southern Synod is now the Southeastern Synod and the northerly segment is now the Northeastern Synod, is that correct?
A That is correct.
Q That division as I recall occurred in what time?
A I believe it was in 1968.
Q Did you give any consideration to locating facilities for, separately for each of the three camps?
A We had talked about this. And recognizing that administratively, we always have operated at one camping program, we felt that we would look but that it was of primary concern to be able to bring all of our sites together into one area.
Q Where did you look?
A Where did we look? Over the Poconos, I can remember; let's see, that we, when I say we, one of the times I know it was the executive director and I went up to the Delaware River north to the Dingmans Ferry area of the river and looked at two sites up there. We looked south of our campsites, into an area called Cherry Valley at a site. We also looked at a site near Kresgeville, one near Reeders, one which is on the Lehigh River off of Route 115. Those are the ones I can recall at this point.

Q And did the sites that you mentioned, any of these [523] sites satisfy your criteria?

A No, they did not. They did not, generally because of the size of the campsite. The acreage was not there. And their locations were scattered. We couldn't bring, you know, the three sites together. They were scattered all over the Poconos.

Some of the sites, the water problem was there. There were lakes, yes. But the lakes at the time we saw them were polluted. They had little streams running in. They were not lakes that could keep cleaning themselves and would have created what we thought would be serious problems. Many of these sites, the buildings were not adequate for the type of program that we carry on in our camps.

Q Did you have a professional acting as a consultant? Did you get any expert help in the search?

A Yes, we had a professional consultant, a real estate man who was the consultant for real estate of the Eastern Pennsylvania Synod at that time, Mr. Harold Snyder. And it was through his office that we made known that we were looking for camps and also through his office, many times we received information concerning campsites.

Q You mentioned Dingmans Ferry, you looked up at Dingmans Ferry. Is that along the Delaware River?

A Yes, it is.

Q Is that, how far up the river from the three camps [524] is Dingmans Ferry?

A Well, I can't remember in mileage. It was maybe, would a half hour be about right? I don't know, I think that would seem to be about . . .

Q Was the Dingmans Ferry area within the Tocks Island Project area?

A The river part of it, yes. We were just up the hill to the west of the river.

Q On these, the Dingmans Ferry sites were not river frontage?

A They were not river frontage, no.

Q By the way, was there anything available along the river, north of Shawnee?

A No, there wouldn't have been anything north of Shawnee because the Tocks Island Project itself went all the way up to Port Jervis which was the border city between New York and Pennsylvania, the states.

Q When you were appointed to the committee in 1963, were you aware of the Tocks Island Project?

A Yes, we were. Yes, we were.

Q Well, tell us then, sir, how you found the Bear Creek site?

A We looked at these other sites and then received information from a real estate firm in Pottstown that they had a site they would want to show to us.

[525] Q So you went, what happened?

A We went then to look at this site. It was located on the Bear Creek, immediately north of the Bear Creek community. It was 1200 acres. And when we saw it, we were much pleased with what we saw and felt that the size certainly showed some possibility.

Q Pastor Schaefer, I am going to show you a map which has been previously marked as Synod's Exhibit No. 6 and ask you if you would step down from the stand there and point out the 1200 acres which first came to your attention.

(Whereupon, the witness assumed the position at the exhibit.)

A The 1200 acres that came to our attention were the acreage, were to the west of Bear Creek.

BY MR. DITTMANN:

Q And point out to the jury again where Bear Creek runs.

A This is Bear Creek running up there, here.

Q Running up and down?

A Yes, it goes up like this (indicating).

Q So after you found this 1200-acre tract, what was your next step?

A Well, there were, about half the committee saw it the first time. Second, we then asked the rest of the committee to go up and take a look at the site, after they had remet as [526] a committee to discuss the possibilities

of this site. While we were talking about all of this we became very much concerned about the control of the water of Bear Creek itself, because we felt that with the type of program we had, it was necessary for us to have control of both banks of the creek, thus eliminating the possibility of other people having access to that body of water. Our attempt was, of course, we are talking in terms of the lake, the lake had originally been there and the dam had been washed out, I think, in one of our hurricanes in the '50's. And that if we wanted to carry on water programs, we had to protect ourselves so that we could maintain a good activity program without the interference of others. So therefore, we then went back to the real estate agents and said, you know, is there anyway that we can get land or the west bank, on the east bank of this creek in order to protect our interest in the camping program.

At that point we were told that yes, there was land available. It was 1500 acres. We said, "Can we have part of it?" No, it was not available in part, it would have to be a total parcel. We felt that this was necessary and therefore decided as a committee that we ought to buy both of these parcels in order to maintain it. As the other issue that enters in, that is the concern for the water shed and the protection of our water. If we would buy this property, we recognized that by controlling both sides we also would control [527] most or all of the water shed and protect and maintain a good water. To the north of us, in this section up here, were state game lands and you well realized that there would be natural protection to keep pure water.

Q How was the price for this Bear Creek site?

A The price was good, it was under $100 an acre.

Q How did that compare with some of the other properties that you looked at in your search?

A The price that was considerably lower, in terms of acreage.

Q That is the price per acre?

A Per acre, yes.

Q Were there any improvements on this site to speak of?

A There was what I chose to call a lodge located in this area. There was a cabin on the other side of the creek that was run down and I think there was a garage to the lodge.

Q How did this lodge or how did this tract in terms of improvements compare with some of the other tracts that you had previously looked at?

A Well, this tract offered us the opportunity of being able to bring in improvements that would be in keeping with our camping program whereas as we looked at other campsites, our problem always was you know, the buildings existing facilities, which are not adequate to what we had as a program.

* * * *

[577] Q Have you at my request reviewed the minutes of the executive board since its action in 1968, to determine whether there had been any further action taken by the executive board or by the convention?

A Yes.

Q To modify, rescind, repeal or change that 1968 action?

A I did review the record and no action has been taken to, in any way, to change that 1968 action. Every year since then there has been an update of what has been happening in terms of our relationship to this condemnation proceeding, but the master plan and that action taken in 1968 has never been altered, changed or rescinded.

Q Now, Dr. Janson, if the Synod is awarded the cost of constructing substitute facilities in this lawsuit, how would those proceeds be used by the Synod?

A Yes, all the proceeds would go into the development of the facility at Bear Creek; principally, in the relocation of the three camps. That would certainly be the primary focus. So all of it would be utilized at Bear Creek.

Q And you indicated the focus would be on the three camps?

A Right.

Q You said earlier that the first priority would be in relocation of the three camps, is that right?

[578] A Three camps, right.

Q Now, Dr. Janson, if the Synod was only awarded the fair market value of the property, based on the information that you have learned of the fair market value figures, what effect would this have on the future camping program of the Synod at Bear Creek?

A It would be a very severe blow. I mean, we have the $450,000 mortgage at this point that is facing us. And if the fair market value figure remains at what it is, it would just seem to me to be an impossible situation for us to face in terms of remaining in camping because we have, I think, a significant investment in the site at this point and it would be just about a wipeout as I see it.

MR. DITTMANN: Cross examine.

CROSS EXAMINATION

BY MR. RUVOLO:

Q Good morning.

A Good morning.

Q Back in 1964 is when the Synod purchased the property at Bear Creek, correct?

A Yes, sir.

Q Does that meet your recollection?

A Yes, sir, that is my recollection.

Q And at that time, they bought 3,000, approximately 3,800 acres and I think the price that we have heard is about * * *

* * * *

[682] Q Is there any dates to your knowledge, when any three of these camps were on the market and available for purchase at the same time?

A Not that I know for certain.

Q Then, are you telling me that there is no, since there was no one date on which any of these three camps that you have referred to were available for purchase, there was no ready market available for the Synod, except Bear Creek during this period?

A No, sir, I didn't say that.

Q Now, what did you say?

A I said that these are possible substitute facilities for a functionally equivalent camp.

Q That could have been picked up one by one during the period?

A That is correct. That was one method of doing it. The other would be the combination that we also pointed out. You could have made one acquisition to accommodate two of the camps and the third one could have been made independently.

Q Incidentally, directing your attention to the double combination, I think your first choice, your first suggestion there, which is that right here (indicating)?

A Yes, sir.

Q That is camp number nine and camp number one, is that right?

* * * *

[721] is a free camping program because it is not. This is a camping program which the Synod, the two synods sponsored. They charged modest fees. The fees were intended to come close to paying the cost of the services. They never did. Instead, the synods, of course, contributed the extra money that was needed to balance the budget. And this, of course, resulted in a camping program that provided a lot of camping over almost fifty years. I guess, for almost literally ten thousand campers enjoyed this. Even Mr. Moore, some of his children had attended the camp and at the same time, as the evidence showed, children, underprivileged children have been given the opportunity to participate in this program, children with special needs and special problems.

Now, as far as eligibility is concerned, these camps have been available on a first come, first serve basis ever since their inception. They are not restricted to members of the Lutheran church or members of the Lutheran Sunday School or anything like that. They are first come, first served. They take care of age groups roughly between 8 and 16. I think Ministerium takes a slightly older group.

But, now as far as the numbers are concerned, the testimony indicates that approximately 50 percent of the campers were members of the Lutheran church. The other 50 percent were not.

The testimony also indicates that there was a lower [722] fee paid by the Lutherans than non-Lutherans.

However, that didn't increase the percentage, still was, even despite the lower fee charged Lutheran children, there was less than a majority of Lutheran children attending the camps.

The Lutherans, the Synod has no apology, of course, for conducting or sponsoring a camping program, particularly a quality program of this sort. And it was suggested, apparently during the course of the trial that this was merely a church program that was designed to promote the Lutheran church. I think it is quite clear from the witnesses who have testified and what they have said that this is a program of providing camping experience to young people under ideal outdoor conditions. This is the church performing its charitable mission. And, of course, if the children become converted to a particular form of religion, that is up to them, but the fact is that this is a program which is not restricted or limited in anyway, and it is, as I say, over half of the children in recent years have not been Lutheran. So that has no application here. I think the important thing is a substantial segment of the community being served by this kind of a program and that is the test that you should honor, you should apply in this situation; not whether or not this is a one particular religious denomination. The denomination is sponsoring this thing.

I mentioned earlier that in addition to children with special needs have attended the facilities and I think Pastor [723] Gulliford explained some of those categories; the mentally retarded children from the White Haven School have attended. Emotionally disturbed children have attended and as I recall, Pastor Gulliford pointed out that he thought it was very desirable from everybody's point of view to have a mix at the camp, not only of, you know, of normal children, but you work into that kind of a program, a certain number of disturbed children and children with special problems and underprivileged types and that way, everybody benefits by the camping experience, particularly, in the case of the underprivileged children, and the campership program that was described to you. There, I think Pastor Neumeyer brought out very clearly in testifying concerning the inner city program in Philadelphia, that one of the

great advantages and benefits of this particular program from his point of view was that this gave a number of underprivileged children from the center city area in Philadelphia, non-whites, an opportunity to meet and associate with and relate to children from, white children, children from smaller communities. In that way, it promoted greater understanding of the two types of children. He also pointed out, for example, that it gave some of the children a chance to escape the gang influence in the city and so to get a fresh outlook. He was particularly concerned about any possibility of a reduction or cutback in this camping program. If anything, you recall that he testified, he foresaw an increasing need for this [724] kind of program. Now, the children that were sent from the inner city under that program went there under camperships or scholarships as you might call them and that is on the basis of money that Pastor Neumeyer was able to raise. Those children paid part of their way or their sponsors paid part of their way. The fact that, I think experience has indicated in this sort of thing that people would make some contribution to their experience like that, usually get more out of it than if they get a totally free ride and I am sure that was one of the reasons for it. Plus the fact that everybody contributes a part. You can spread the scholarship funds among a larger number of people. As you may recall, approximately 228 children were involved in the campership program during 1975. So that this is a substantial segment, not a large percentage in terms of the total operation, but it is, it is a very successful proportion in terms of the overall objectives of the camping experience.

Then, there is, then you heard Mr. Seligman who is a representative and spokesman for the Tri-Square Organization had an interesting history. Tri-Square once had its camp, its camp was condemned. It was put out of business. It concluded reluctantly that it could use its funds better by providing scholarships to attend this kind of camping program than it could by attempting to go out and construct or replace its facilities. And Tri-Square, as a * * *

* * * *

[743] uniqueness about it, in that it couldn't have been put to any use than what it was being used as.

And the third thing they must prove is a lack of market ability. In other words, that there was no fair market value or that the fair market value would be so inadequate that it couldn't recompense them for what was taken.

Now, assuming they prove all three of those things, they must still prove one more thing. And that is, that there is a reasonable necessity to replace it for the good of the community, public good. And, of course, if you were going to find necessity, you must find implied with that statement is that they were performing a public good. All right, now let's take them one by one.

We know they weren't public. On the question of being not for profit, we concede that they are a religious and charitable organization which was operating on a not-for-monetary profit. No question about it. But, is that the only kind of profit? Think about it. They were putting in operation a camping program which was for the betterment of their religious teachings. Is that not a profit for a religion? Mr. Dittmann said, "And if by chance some kid might be converted . . ." Isn't that what they are there for? Isn't that their mission? So, maybe they were operating not for a monetary profit but maybe for a spiritual profit.

Let's go on to two. Uniqueness; what was so unique [744] about these three camps? There were plenty of other camps just like it. You have heard it through the testimony. There were plenty of other camps that were in the same type of programs and was this site so unique that it couldn't be used for something else? Their own witnesses told us no. Their own testimony tells us no. They were being used as camps in 1970 and now, they are being—and then they were changed to be used as a retreat center. Well, that's different from camps. And Reverend Gulliford told us that in the fall they rented out the property to a football, to a high school football team to use as football camps. That is a different use. It is not the same specific use they had and why couldn't it be used as a resort? After all, what is a resort? It is

just a camp for big campers. And how many resorts have you gone to where you see people will live and share, say, a cabin? I mean, different rooms, of course, but units of four here and five here and six there. The same thing could apply here. You might have to make some repairs or alterations and move around, but this wasn't unique.

Point three, they had to prove lack of marketability. Their own witness, Mr. Roberts, said that this property had fair market value and he will probably testify tomorrow or the next day and tell you what that fair market value is. How can you say it has no marketability on one hand and yet on the other hand you say, "Oh, yes, it had a [745] marketability. It could have been sold on the open market." There is a conflict there. So in my opinion and the first three they haven't proved anything that they were required to do.

Now, let's get something straight and let's get it straight from the beginning. We said that this is good property located along the river and we intend to pay for that. We want to pay for that. We want to pay just compensation for that. We are not knocking the camps. Yes, they had good programs. They weren't that different from any others, but they were good programs; no question about it.

Now, as I said to you, they want to, if they prove the first three, there is still one big element they must prove and that is, that it is reasonably necessary for them to continue these camps for the good of the public, for the public welfare, for the community welfare. Well, let's look at what they have shown. Where have they shown community welfare? Where have they tried to intimate there was community welfare but really didn't prove it. All they have shown is that they want to continue to operate for their own welfare, for their own good so that they can continue in business. Well, gee-whiz, if we took somebody's business down the street, he could say the same thing, couldn't he? "You are taking my business, I want to continue to operate. Build me a new business." The law would say, "No, we can't build you a new [746] business. The test is fair market value. You take the money

and if you want to continue in business, go operate, go open up a new business." They should be treated no differently here. This is their choice. They were in it for their good, their benefit and that is what the evidence has shown. Think about the children that came in. They came from what community? New York, New Jersey, Pennsylvania; as far away as Florida. What community is receiving the benefit? Most of them were from middle income families or professional people. Is that a community benefit? I don't think so. Most of them were Lutherans. And if you look at the exhibit, through the testimony, by far, until we took the property in 1970, there was a big difference in the percentages. There was a substantial difference in the percentages. There was a substantial difference in being Lutheran; before 1970, and those kids that were accepted after 1970. Fine, this is their business, if they want to take care of their own, fine, admirable. But, where is the community benefit? That is their benefit, not the community's benefit. Religion was taught on the premises. We heard Reverend Gulliford tell us that there was a class in the morning and devotions were held at night. I respect religious freedom as much as anybody, but again, that doesn't show a community need. That shows for their own benefit. As of 1970, which was the year we took the property, out of approximately 3,000 campers, and you can take that by figuring they operate on a eight-week season and they told us they [747] could handle up to 600 campers at one time, that is 4800 campers, but take 3,000. Out of 3,000 campers 92 were testified to as being underprivileged. Is that a benefit to the community? 92 out of 3,000 or more? And those 92 had to pay to get there. Not maybe themselves, but somebody had to pay for them. The camp didn't give away any charity. Every kid had to be sponsored. So, where did they lose? If somebody is paying for the kids to go to camp, they haven't lost. Who is taking any money? I will get to this a little further on, but Reverend Neumeyer, he was given a break because he was dealing with their own children from their own programs in center city or inner city in Philadelphia. What, did they give him a free

scholarship? No, they said, "Some of the parents had to pay." All right, if they had to pay, couldn't they give them a scholarship for the difference? No, he had to negotiate with them to get a $7 discount per week. Is that a benefit, a public benefit? I submit not.

And they said, and they led us on to think, "We then went in and we took care of really charitable kids. We took seven kids from White Haven in 1972 or 1973," I think. Seven out of, again, over 3,000. But those kids weren't free. They weren't given a scholarship. They had to pay or somebody had to pay for them. In this case, the state. And they took 22 kids from the Silver Springs Institution, but they were a little trouble, some of the kids got a little tough to handle * * *

* * * *

[786] THE COURT: The objection is overruled.

(Discussion off the record.)

THE COURT: Number six has been amended by the Synod to change "is" and delete it and substitute "may", so the point will read, "The existence or nonexistence of fair market value of the condemned facilities may not in and of itself be determinative of any issue in the case."

(Discussion off the record.)

THE COURT: As I understand the government's answer to Point No. 7, it maintains in its position, which it has held all along that depreciation is a proper deduction. I have ruled otherwise and that is why the record, no evidence has been offered of depreciation; no evidence of depreciation has been offered.

However, the government does not object to this language in view of my ruling.

Is that correct?

MR. RUVOLO: Sobeit.

(Discussion off the record.)

MR. DITTMANN: I request this additional point which would be numbered Point No. 8.

"You may find that the doctrine applies if the facilities were operated on a not-for-profit basis for a religious or charitable purpose and had no ready market."

(Discussion off the record.)

[787] THE COURT: The government requests that to Point No. 8, there be added the following: "and was fulfilling a community need or purpose."

And the Synod does not object.

(Whereupon, the discussion inside Chambers was concluded.)

* * * *

[809] doctrine will apply. If you do not find this to be the case, then the property taken should be treated like that of any other private condemnee."

I will ask you to disregard that and consider my other instruction because the doctrine can apply to something which is not public. But the factors have to be present which I have given you.

Now, we have prepared three questions for you. We call these Special Interrogatories.

Number 1. "Under the principles I have given you, does the doctrine of substitute facilities apply?" Yes or no. Just answer it one way.

Next, "If your answer to Interrogatory Number 1 is yes, please answer Interrogatory Number 2." In other words, if you find that the doctrine does apply, answer Number 2, which is as follows:

"What amount would it cost for substitute facilities?" And then, you write in the amount. The third interrogatory is as follows:

"Answer Interrogatory Number 3 if you have answered Yes to Interrogatory Number 1." Again, if you have found that the doctrine applies. Interrogatory Number 3 is:

"Under the principles I have given you, what date have you found as a reasonable time for the application of the substitute facilities doctrine?" Just write in the date.

* * * *

[811] Special Interrogatory. "Under the principles I have given you, does the doctrine of substitute facilities apply?"

"No."

Signed September 30, 1975, by foreman Henry G. Urick.

Members of the jury, is this your verdict, so say you all?

(Jury, indicating assent.)

THE CLERK: Thank you; please be seated.

MR. DITTMANN: If the Court please, may I ask that the jury be polled?

THE COURT: Yes.

THE CLERK: Juror No. 1, please rise.

Special Interrogatory. Under the principles I have given you, does the doctrine of substitute facilities apply?

HENRY URICK: No.

THE CLERK: Juror No. 2, please rise.

Special Interrogatory. Under the principles I have given you, does the doctrine of substitute facilities apply?

THOMAS SCHOEN: No.

THE CLERK: Juror No. 3, please rise.

Special Interrogatory. Under the principles I have given you, does the doctrine of substitute facilities apply?

MARGARET MCKINSEY: No.

THE CLERK: Juror No. 4, please rise.

Special Interrogatory. Under the principles I have * * *

* * * *

[961] Mr. Moore's appraisal of the tracts in question as arrived at in his cost approach? Mr. Moore's economic obsolescence", and then the question lists the three camps with the tract numbers and blank spaces. It is signed by the foreman; and counsel have agreed that the answer to the question shall be answered by writing in the spaces, the following: "In the Miller Tract, $45,000; in the Ministerium, $52,000; and Hagan, $41,000."

(Whereupon, the jury returned to the Courtroom at 2:20 p.m.)

THE CLERK: Members of the jury, have you agreed upon a verdict?

JUROR NO. 1: We have.

(Whereupon, the verdict was noted by the Court.)

THE CLERK: Members of the jury, please rise.

Hearken unto your verdict in the case of United States District Court for the Middle District of Pennsylvania, United States of America versus 564.54 Acres of Land, More or Less, Situate in Monroe and Pike Counties, Commonwealth of Pennsylvania and the Southeastern Synod of the Lutheran Church in America, Civil No. 70,240, Tract No. 1500, 2122 and 2132.

"We the jury find in favor of the Southeastern Pennsylvania Synod of the Lutheran Church of America and award the following: Tract No. 1500, Camp Miller, $250,000; Tract No. 2122, Camp Ministerium, $300,000; Tract No. 2132, Camp Hagan, $190,000; dated October 3, 1975, signed by foreman, Henry G. Urick.

SUPREME COURT OF THE UNITED STATES

No. 78-488

UNITED STATES, PETITIONER,

v.

564.54 ACRES OF LAND, MORE OR LESS, SITUATED IN MONROE AND PIKE COUNTIES, PENNSYLVANIA, ET AL.

Order Allowing Certiorari. Filed November 27, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

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